



CONSTITUTIONAL COURT OF SOUTH AFRICA

Minister of Police and Others v Premier of the Western Cape and Others

Case CCT 13/13

Date of Judgment: 01 October 2013

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 1 October 2013 the Constitutional Court handed down a judgment, refusing leave to appeal and direct access.

On 28 November 2011, the Women's Legal Centre, acting on behalf of several non-governmental organisations, delivered a complaint to the Premier of the Western Cape (Premier) regarding alleged inefficiencies in the South African Police Services (SAPS) and the City of Cape Town Municipal Police Services (Metro Police) operating in Khayelitsha. The complainants requested the Premier to appoint a commission of inquiry to deal with the complaint. The Premier forwarded the complaint to the Minister of Police, National Commissioner of the SAPS and the Provincial Commissioner of the SAPS.

Correspondence was exchanged between the various parties over a period of approximately eight months. Eventually, the Western Cape Provincial cabinet approved the appointment of a commission of inquiry (Commission) and the Premier conveyed to the public her decision to appoint the Commission on 22 August 2012. The Commission issued subpoenas to various members of the SAPS.

The applicants then lodged an application for an urgent interim interdict in the Western Cape High Court (High Court). They asked for an order restraining the Commission from issuing and giving effect to subpoenas and directing it to suspend its activities pending a decision of the Court setting aside the Premier's decision to appoint the Commission on the basis that it was inconsistent with the Constitution, irrational or unlawful. The urgent application was dismissed.

In the Constitutional Court the applicants argued that section 206(3) and (5) read with section 127(2)(e) of the Constitution does not authorise the Premier to appoint a commission of inquiry with coercive powers over members of the SAPS. They contended that before establishing the Commission, the Premier did not comply with her constitutional obligations under Chapter 3 of the Constitution and the Intergovernmental Framework Relations Act. Moreover, they contended that the terms of reference of the Commission are vague and overbroad.

In a unanimous judgment by Moseneke DCJ, the Constitutional Court held that the dispute concerns a contestation between organs of state in the national and provincial sphere over the competence or power provided for in the Constitution. The dispute thus falls within the ambit of section 167(4)(a) and the Court's exclusive jurisdiction. The Court held that section 206(5) accords a province the power to establish a commission of inquiry into policing. In that context, a commission without coercive powers over the police would be unable to fulfill its mandate. Furthermore, the Premier was obliged to take reasonable steps to shield the residents of Khayelitsha from an unrelenting invasion of their fundamental rights as a result of the alleged police inefficiency.

In relation to the Chapter 3 obligations, the Court held that section 41 of the Constitution does not require the Premier to declare a dispute before she exercises powers properly vested in her. The Court further held that the terms of reference do not suffer from over-breadth or vagueness.

The Constitutional Court refused to make an order declaring the Premier's decision to establish the Commission inconsistent with the Constitution and invalid. The applicants were directed to pay the costs of the Social Justice Coalition in the High Court and the Constitutional Court including costs of two counsel, if applicable.