CONSTITUTIONAL COURT OF SOUTH AFRICA

South African Veterinary Association v Speaker of the National Assembly and Others

CCT 27/18

Date of hearing: 11 September 2018
Date of judgment: 5 December 2018

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 Wednesday, 5 December 2018 at 10h00 the Constitutional Court handed down judgment in an application for direct access. The South African Veterinary Association (applicant) sought an order declaring that Parliament had failed to comply with its constitutional obligation to facilitate public involvement before passing the Medicines and Related Substances Amendment Act. Specifically, the applicant contended that the inclusion of the word "veterinarian" in the Act had been done without facilitating the requisite public involvement in both the National Assembly and the National Council of Provinces.

In December 2011, the Medicines and Related Substances Amendment Bill (Bill) was introduced into the National Assembly and later published for public comment. The Bill sought to amend various sections of Medicines and Related Substances Act, including the section relating to which professionals required licences to dispense and compound medicines. The version of the Bill that was published for public comment did not include veterinarians in the list of professionals who required these licences. The Bill that was signed into law on 23 December 2015 did.

The applicant, brought an application for direct access to the Constitutional Court. It submitted that Parliament had failed in its constitutional duty to facilitate public participation in the law-making process because the National Assembly had held no public hearings about the version of the Bill that included veterinarians, and the public hearings held by National Council of Provinces had been procedurally and substantively flawed. To rectify these short-comings the applicant contended that the section containing the word "veterinarian" should be declared constitutionally invalid. In the alternative, the applicant

argued that the entire Medicines and Related Substances Amendment Act should be declared constitutionally invalid. In the further alternative, they contended that the insertion of the word "veterinarian" should be declared to have been done in manner that is inconsistent with the Constitution, and that it should be severed from the remainder of the Act.

None of the respondents opposed the application. Before the hearing, the Constitutional Court requested the Johannesburg Bar Council to appoint counsel as amicus curiae (friend of the court) to make independent submissions primarily on the subject of remedy. The amicus curiae made both written and oral submissions. On the day of the hearing the Minister of Health and the Minister of Agriculture, Forestry and Fisheries were represented and their counsel too made submissions regarding the crafting of an appropriate remedy.

In a unanimous judgment written by Goliath AJ, the Constitutional Court held that both the National Assembly and the National Council of Provinces failed to facilitate meaningful public involvement around the insertion of the word "veterinarian" into the Act. The insertion of the word constituted a material amendment to the Act, as it brought an entire profession, which had previously been regulated by other legislation, under the Act's purview. The National Assembly Portfolio Committee made this amendment without obtaining the requisite permission from the National Assembly and without any public involvement on the insertion. This complete lack of public participation renders the actions of the National Assembly constitutionally invalid.

The Constitutional Court held further that while the National Council of Provinces took some steps to facilitate public participation on the Bill, it did not take reasonable steps to ensure that the public was consulted about the insertion of the word "veterinarian". In some provinces where public hearings were held, only one or two days' notice was given to the public. This unreasonably hindered the ability of interested parties to take note of the amendments and prepare representations on them. Moreover, the Constitutional Court held that the failure to bring the insertion of "veterinarian" to the attention of representatives of that profession was unreasonable. Veterinarians, as an affected interest group, should have been invited to make submissions. These failings by the National Council of Provinces, through the public hearings held by the Provincial Legislatures, render the insertion of the word "veterinarian" further constitutionally invalid.

The Constitutional Court held that it could only decide the narrow issue before it, in terms of the validity of the insertion of the word "veterinarian". It could not determine whether the failings by Parliament rendered the entire licensing provision, or the Amendment Act invalid. However, the door is not closed to future litigants who might want to bring a similar challenge based on a failure to facilitate public participation in passing the Act. Consequently, this Court held that the only appropriate remedy was to declare the insertion of the word "veterinarian" constitutionally invalid, and sever it from the rest of the licensing section. It held that this would not cause any difficulties in the implementation and administration of the rest of the Act. The Constitutional Court ordered that the first and second respondents, as the representatives of the two houses of Parliament, should bear the costs of the application.