



CONSTITUTIONAL COURT OF SOUTH AFRICA

My Vote Counts NPC v Minister of Justice and Correctional Services

CCT 249/17

Date of hearing: 13 March 2018

Date of judgment: 21 June 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 21 June 2018 at 10h00, the Constitutional Court handed down judgment in an application for the confirmation of an order of Constitutional invalidity made by the High Court of South Africa, Western Cape Division, Cape Town (High Court).

My Vote Counts NPC had sought information relating to the private funding of some political parties in terms of the Promotion of Access to Information Act 2 of 2002 (PAIA). Taking advantage of the provisions of PAIA, some of those parties refused to disclose this information. This led to My Vote Counts initiating an application in the Western Cape High Court challenging the constitutionality of PAIA. My Vote Counts argued that although PAIA is indeed the national legislation envisaged by section 32 of the Constitution to give effect to a citizen's right of access to information, it has failed to do so. This deficiency was however confined to access to information on the private funding of political parties and independent candidates.

The case was essentially that, properly understood, section 32 read with sections 19 and 7(2) of the Constitution imposes an obligation on Parliament to pass legislation that provides for the recordal and disclosure of information on the private funding of political parties and independent candidates. This transparency would, according to My Vote Counts, help in the fight against the corruption that is tied up with private funding. It was furthermore contended that PAIA, being the legislation passed to facilitate access to information, has failed to do so. The High Court agreed, hence these confirmation proceedings. The High Court concluded that PAIA neither applies to political parties nor to independent candidates nor to all records on private funding. It in effect held that

PAIA's failure to provide for access to information on private funding is a deficiency that renders PAIA inconsistent with the provisions of sections 32, 7(2) and 19 of the Constitution, read together.

Mogoeng CJ (with Zondo DCJ, Dlodlo AJ, Goliath AJ, Jafta J, Khampepe J, Madlanga J, Petse AJ and Theron J concurring) for the majority held that the State is under an obligation that flows from a proper reading of sections 32, 19 and 7(2) of the Constitution to do everything reasonably possible to give practical and meaningful expression to the right of access to information and the right to vote. The majority further contended that this is so because the exercise of the right to vote must be an informed choice, and there is a vital connection between the proper exercise of the right to vote and the right of access to information. And "without access to information, the ability of citizens to make responsible political decisions and participate meaningfully in public life is undermined".

So important is the obligation to record, preserve and make private funding information reasonably accessible to the voting public, that it must also be easily accessible to the media, NGO's, academia and other political players. And section 16 of the Constitution was interpreted to facilitate this wide dissemination of information that is essential for the proper functioning and vibrancy of our constitutional democracy.

The majority also held that the disclosure of private funding would help the public to detect whose favours political players are likely to return, once elected into public office. The Court concluded that the current Parliamentary process in relation to a private funding regulatory framework will in no way be interfered with or undermined by the judgment. These are two distinct yet necessary processes.

The Constitutional Court confirmed the order of constitutional invalidity and ordered Parliament to amend PAIA and take any other measure it deems appropriate to provide for the recordal, preservation and facilitation of reasonable access to information on the private funding of political parties and independent candidates within a period of 18 months. The Court also ordered the Minister of Justice and Correctional Services to pay the costs of My Vote Counts.

In a concurring judgment, Froneman J explained that i) aspects of any new legislation not at issue in this case might have to be dealt with in future, ii) why the recordal and disclosure of information pertaining to the private funding of political parties must be systematic and continuous, and iii) that the right to vote is the whole citizenry's right, and to view it only as an atomised individual right diminishes our concept of participatory democracy. Cachalia AJ concurred in the judgment of Froneman J.