Sneller Verbatim/ASS

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

PRETORIA CASE NO: 25233/05

2005-09-10

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE YES/NO
(2) OF INTEREST TO OTHER JUDGES YES/NO
(3) REVISED ✓
DATE 7/9/05 SIGNATURE

In the matter between

ALGORAX (PTY) LIMITED Applicant

and

THE INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA AND OTHERS Respondent

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JUDGMENT

SHONGWE J: As I have indicated earlier on that this matter is urgent. The application is threefold.

Firstly, the applicant seeks an order that the 1st respondent be ordered to inform the applicant of the fact and the nature of its final decision and proposed recommendation to the 2nd respondent in the 1st respondent's investigation of the anti-dumping duties on carbon black originating in or exported from Egypt.

Secondly, that the 1st respondent is interdicted from forwarding the final decision of the 2nd respondent pending the final determination of the applicant's contemplated judicial review of the final decision, alternatively pending the applicant's failure to comply with prayers 4.1 or 4.2 which is stated in the notice of motion and the third phase of the application is that the interim interdict referred to in prayer 3 will lapse as and when the 1st respondent notifies the applicant in writing that the 1st respondent's final decision is to uphold the anti-dumping duties presently in place against the export of carbon black originating in Egypt.

It is common cause that there is no provision or mechanism to advise and inform the applicant of the decision made by the Commission or the 2nd respondent. As I have indicated earlier on failure to allow the applicant to access the decision, in my view, is repugnant to the spirit and the purport of the Bill of Rights. It is, in my view, reasonable to expect that the applicant should be advised of the decision after having made representations to the Commission. though it may be open to doubt the applicant has established a *prima facie* right. There is no doubt that an irreparable harm, as indicated by the applicant in his papers is well grounded.

The balance of convenience favours the applicant. There is no prejudice to the respondents. Should the recommendation or the decision of the Commission be sent to the 2nd respondent, on the face of the papers it appears that it would be the end of the matter. Therefore, I come to the conclusion that the balance of convenience favours the applicant.

Secondly, that the 1st respondent is interdicted from forwarding the final decision of the 2nd respondent pending the final determination of the applicant's contemplated judicial review of the final decision, alternatively pending the applicant's failure to comply with prayers 4.1 or 4.2 which is stated in the notice of motion and the third phase of the application is that the interim interdict referred to in prayer 3 will lapse as and when the 1st respondent notifies the applicant in writing that the 1st respondent's final decision is to uphold the anti-dumping duties presently in place against the export of carbon black originating in Egypt.

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The grounds which have been stated by the applicant in the papers, that is, for the review, are basically not disputed. In my view, on that aspect only, *prima facie* there is a prospect of success.

As far as the constitutional damages are concerned I have not been able to come across any authority that points to the contrary of what exists being that no such remedy exists and, therefore, if it is accepted that no such remedy exists then the applicant seem not to have any adequate alternative remedy.

On the question of whether it is likely that ACB could dump in South Africa on the papers already there is an indication or a propensity to do so in that reference is made to the case which involved Thailand when the sister company of the ACB in fact continued to dump and the likelihood, therefore, does exist that such conduct may be expected from ACB.

In the light what I have said and the reasons stated above I then grant the application in terms of prayer 2, prayer 3 which automatically, for practical reasons, incorporates prayer 4, 5 and prayer 6 of the notice of motion. I hand down the judgment.

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