



IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No. 22507/2012

In the matter between:

**BEAUVALLON SENIOR SECONDARY SCHOOL + 34
OTHERS**

Applicants

and

**THE MINISTER OF EDUCATION FOR THE WESTERN
CAPE
WESTERN CAPE EDUCATION DEPARTMENT
THE MINISTER OF BASIC EDUCATION
THE MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

1st Respondent

2nd Respondent

3rd Respondent

4th Respondent

Coram: BOZALEK et LE GRANGE et DOLAMO JJ
Majority Judgment: LE GRANGE et DOLAMO JJ
Minority Judgment: BOZALEK J
Heard: 10 – 11 JUNE 2013
Delivered: 31 JULY 2013

For the Applicants: Adv NM Arendse SC et Adv S Fergus
As instructed by: Pretorius & Andrews:
Ref: J Andrews

For the 1st & 2nd Respondents: Adv E Fagan SC et Adv E Van Huyssteen
As Instructed by: State Attorney: Cape Town
Ref: Ms G Behardien

For the 3rd Respondent: Adv T Masuku
As Instructed by: State Attorney: Cape Town
Ref: Ms A Mugjenkar

There are two judgments in this matter which was heard by a full bench comprising Bozalek, Le Grange and Dolamo JJ.

The order of the court is contained in the majority judgment written by Le Grange J and concurred in by Dolamo J. The dissenting judgment of Bozalek J contains findings, however, which are concurred in and adopted by Le Grange and Dolamo JJ.

This matter concerns a review of a series of administrative decisions taken by the Provincial Minister of Education for the Western Cape viz his decision to close twenty schools in terms of s33(1) and (2) of the South African Schools Act, 84 of 1996. The applicant schools alleged that the Minister's decisions were arbitrary and irrational and moreover failed to comply with the requirements of s33(2). These provisions require the reasons for the proposed closures to be furnished to the affected school's governing body and for that body to be afforded a reasonable opportunity to make representations to the Minister in relation to the proposed closure as well as for the convening of a public hearing to enable the community to make such representations as well.

The applicants also launched a constitutional challenge to the constitutionality of s33(2) of the Act on the grounds that it failed to set out specific criteria for the closure of a public school.

The first issue determined by the Court was whether the closure decisions amounted to executive action (reviewable only on the grounds of legality) or administrative action as contemplated in PAJA and as such susceptible to review under the full range of review grounds listed in PAJA.

The entire Court held that the decisions amounted to administrative action and were reviewable under the full range of grounds in PAJA.

The second issue was the attack on the constitutionality of S33(2). In this regard the entire Court held that the impugned section was not overbroad and that the constitutional challenge had no merit.

The third and fourth issues were the across-the-board as well as the school-specific grounds of review in relation to both the procedure followed by the Minister and the Department in making the schools closure decisions as well the merits of those decisions.

In this regard the majority held that the reasons furnished by the Minister for his decisions were inadequate to the extent that no meaningful representations by the school communities could take place. The majority found, furthermore, when regard was had to the circumstances of those schools which the Minister ultimately decided not to close, that his decisions to close the twenty schools were irrational.

The minority, Bozalek J, found that the Minister had followed the procedure stipulated by s33(2) for the closure of schools, that the reasons furnished although brief, were adequate, that a full opportunity had been granted to the affected parties to make representations and, save in the case of one school, that the closure decisions were rational and should not be set aside on review.