



CONSTITUTIONAL COURT OF SOUTH AFRICA

The Black Sash Trust v The Minister of Social Development and Others

CCT 48/17

Date of hearing: 15 March 2017

Date of judgment: 17 March 2017

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.

Today the Constitutional Court handed down a judgment in an urgent application for direct access brought by The Black Sash Trust (Black Sash). Black Sash, a non-profit organisation, is involved in the protection of poor, vulnerable and marginalized people who are recipients of social grants.

In 2012 the South African Social Security Agency (SASSA) contracted with Cash Paymaster Services (Pty) Limited (CPS) to pay social grants on its behalf. This contract was declared invalid by this Court. The order of invalidity was suspended and the Court retained supervisory role over the matter.

On 5 November 2015 SASSA filed a report in this Court, stating that it would not award a new contract, but intended to take over the payment function of social grants from 1 April 2017 when the suspension of invalidity would lapse. On that basis, the Court discharged its supervision. It became apparent following reports from various counsel, that SASSA was not in a position to take over the payment function from CPS on 1 April 2017, and would instead have to seek further assistance from CPS to ensure that over 17 million beneficiaries would be able to continue receiving social grants.

Black Sash brought its application in the public interest and in the interests of all grant beneficiaries to seek reinstatement of the oversight role of this Court for the payment of social grants. It brought its application to ensure that SASSA complies with its constitutional obligations to provide social assistance in a lawful manner that is in line with constitutional rights and values.

Freedom Under Law lodged an application for leave to intervene as second applicant. This application was heard simultaneously with that of Black Sash. Freedom Under Law sought relief aimed at further disciplining the process of the proposed interim contractual arrangement between CPS, the Minister of Social Development (Minister) and SASSA.

CPS did not oppose the orders sought by Black Sash and Freedom Under Law. It supported the re-instatement of the oversight role of this Court and had no problems with the reporting mechanisms that Black Sash was pursuing. Furthermore, CPS accepted that it is under a duty to act reasonably and with due regard to its constitutional obligations in negotiating and contracting with SASSA. The Minister and SASSA also did not oppose the relief sought by Black Sash, but they opposed certain aspects of the relief sought by Freedom Under Law.

Corruption Watch and the South African Post Office Soc Ltd (SAPO) filed applications to be admitted as *amici* (friends of the Court).

In a majority judgment, written by Froneman J (Mogoeng CJ, Nkabinde ADCJ, Cameron J, Jafta J, Khampepe J, Mhlantla J, Mojapelo AJ, Pretorius AJ, Zondo J concurring), the Court granted Black Sash the application for direct access, Freedom Under Law's application for leave to intervene was granted, and both Corruption Watch and SAPO were admitted as friends of the Court.

The Court declared that SASSA and CPS are under a constitutional obligation to ensure payment of social grants to grant beneficiaries from 1 April 2017 until an entity other than CPS is able to do so and that a failure to do so will infringe upon the rights of grant beneficiaries of access to social assistance under section 27(1)(c) of the Constitution. The initial declaration of invalidity of the contract is further suspended for a 12-month period from 1 April 2017. SASSA and CPS are directed to ensure payment of social grants to grant beneficiaries from 1 April 2017, for a period of 12 months, on the same terms and conditions as those in the current contract between them that will expire on 31 March 2017, subject to further conditions set out by the Court. These terms are aimed at ensuring accountability, transparency and protection of the beneficiaries' personal information. Furthermore, the Minister and SASSA are to file reports in a form of an affidavit with this Court on a quarterly basis, commencing on the date of this order, setting out how they plan to ensure the payment of social grants after the expiry of the 12-month period, what steps they have taken in that regard, what further steps they will take, and when they will take each such future step, so as to ensure that the payment of all social grants is made when they fall due after the expiry of the 12-month period. The Court's order also made provision for the involvement of the Auditor-General to evaluate the implementation of the interim contract.

The Court also issued a rule *nisi* which calls on the Minister to give reasons why she should not be ordered to pay the costs of the application in her personal capacity.

In a separate concurring judgment, Madlanga J accepts that the Court has a wide remedial power to order CPS and SASSA to fulfil their obligation of paying social grants.

However, Madlanga J finds difficulty in the convoluted way of first extending the contract expiring on 31 March 2017, presumably with this extension carrying the original invalidity that attached to that contract, only to then extend the suspension of the declaration of invalidity. Madlanga J sees no bar to making a direct order to the effect that, in terms of the Court's wide remedial powers, CPS has to continue paying social grants.