



CONSTITUTIONAL COURT OF SOUTH AFRICA

Richter v The Minister for Home Affairs and Others (with the Democratic Alliance and Others Intervening, and with Afriforum and Another as Amici Curiae)

CCT 03/09 and CCT 09/09
[2009] ZACC 3

Date of Judgment: 12 March 2009

MEDIA SUMMARY

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Wednesday 4 March 2009 the Constitutional Court heard an application for confirmation of an order of constitutional invalidity made by the High Court in Pretoria in respect of section 33(1)(e) of the Electoral Act 73 of 1998 (the Electoral Act) and certain regulations promulgated in terms of that Act. These provisions relate to the right of registered voters who are not in South Africa on polling day to be granted special votes.

The application for confirmation was brought by Mr Willem Richter. The Democratic Alliance with Mr R H Tipper, and Inkatha Freedom Party were admitted as parties in the confirmation proceedings. Afriforum and the Freedom Front Plus were admitted as amici.

At the same hearing, the Court heard two applications for direct access which challenged both section 33(1)(e) of the Electoral Act and the relevant regulations and other provisions of the Act related to the right of citizens to register as voters abroad. The Court has found it convenient to prepare separate judgments in the confirmation proceedings and the direct access applications, respectively, which have been delivered contemporaneously.

Mr Richter is a 27 year old South African citizen who is registered as a voter. He has for the last two years been teaching on contract in the United Kingdom. It is his intention to return to South Africa at the end of this year. Mr Richter wants to vote in the elections to be held on 22 April. He successfully launched an urgent challenge in the High Court against those parts of section 33 of the Electoral Act, which prevent certain categories of South African citizens who are absent from South Africa from voting in the national elections. The High Court declared the challenged provisions to be unconstitutional on the basis that they infringed the right to equality and the right to vote.

That order was referred to the Constitutional Court for confirmation. O'Regan J, writing for a unanimous court, considered the ambit and purpose of the right to vote. She emphasised its symbolic and democratic value, and the obligations the right places on both the state and the voting public. In this light, O'Regan J held that the right to vote is infringed if a registered voter is willing to take reasonable steps to exercise his or her right to vote, but is nevertheless prevented from doing so by a statutory provision.

On this basis, O'Regan J held that section 33(1)(e) of the Electoral Act and the related provisions of the Regulations constitute an unjustifiable limitation of section 19 of the Constitution in restricting the classes of registered voters who are absent from the Republic on election day from participating in elections. The consequence of this conclusion was that the Court had to make an order extending the period within which those who are to be abroad on polling day may notify the Chief Electoral Officer of their intention to do so.

The effect of this Court's order is that all South African citizens who are registered voters and who will be abroad on polling day will be entitled to vote in the election for the National Assembly on 22 April provided they give notice of their intention to do so by 27 March to the Chief Electoral Officer and identify the embassy, high commission or consulate where they intend to cast the special vote.

The Democratic Alliance argued that the Court's order should be extended to allow citizens abroad to vote in the provincial elections also. Given the urgency of the matter and the lack of evidence before the Court on this point, O'Regan J declined to grant that relief.

In the result, the High Court's order of invalidity was confirmed in its essential respects.