



CONSTITUTIONAL COURT OF SOUTH AFRICA

My Vote Counts NPC v Speaker of the National Assembly and Others

CCT 121/14

Date of hearing: 10 February 2015

Date of judgment: 30 September 2015

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 judgment in a matter concerning whether Parliament has failed to fulfil a constitutional obligation by failing to enact national legislation which gives effect to the right of access to information by requiring political parties to disclose, proactively and regularly, the sources of their private funding. Currently, political parties are not obliged to disclose the sources of their private funding before, during or after a general election.

The applicant, My Vote Counts NPC (My Vote Counts), is a non-profit company founded with the aim of campaigning for a more transparent and accountable political system in South Africa. Acting in its own interest and in the public interest, it approached the Constitutional Court requesting it to compel Parliament to pass legislation that would oblige political parties to disclose the sources of their private funding. The respondents, the Speaker of the National Assembly and the Chairperson of the National Council of Provinces (collectively, Parliament), opposed the application. All political parties currently represented in Parliament were cited as respondents, but none of them opposed the application.

Before the Constitutional Court, My Vote Counts argued that information about political parties' private funding is essential for citizens to exercise their constitutional right to vote in South Africa's multi-party democracy. Due to the importance of this information for the exercise of the right to vote, it contended that the constitutional right of access to information, enshrined in the Constitution, requires the systematic disclosure of private funding to political parties. It contended that political parties are central to constitutional governance and that citizens are entitled to equal access to information about their private

funding sources. It therefore argued that Parliament has a constitutional obligation to enact specific legislation, in addition to the wide general provisions of the Promotion of Access to Information Act 2 of 2000 (PAIA), that would require proactive and regular disclosure by political parties of the sources of their private funding.

Parliament argued that there is no need to enact such legislation, as this information can be requested through PAIA, which exhaustively covers the constitutional right of access to information. Moreover, Parliament contended that it had no obligation to enact the specific legislation sought as it had enacted several pieces of legislation that already promote accountable and transparent governance.

The majority judgment, written by Khampepe J, Madlanga J, Nkabinde J and Theron AJ (with Mogoeng CJ, Molemela AJ and Tshiqi AJ concurring), accepted that the Constitutional Court's exclusive jurisdiction is engaged. It held that PAIA is the legislation – envisaged in the Constitution – meant to give effect to the right of access to information. As a result, the majority concluded that, in accordance with the principle of subsidiarity, My Vote Counts should have attacked the constitutional validity of PAIA. This principle enjoins a litigant who is complaining about shortcomings in legislation enacted to give effect to a constitutional right to challenge the constitutional validity of that legislation instead of relying directly on the constitutional right. The majority judgment held that, since the essence of the complaint by My Vote Counts was that PAIA has certain shortcomings, it ought to have attacked its constitutional validity in the High Court. Its failure to do so was dispositive of the case. The majority judgment accordingly dismissed the application.

The minority judgment, written by Cameron J (with Moseneke DCJ, Froneman J and Jappie AJ concurring) held that the constitutional right to vote and the right of access to information requires regular compulsory disclosure of the sources of the private funding of political parties. The minority judgment further found that political parties occupy a unique place in our multi-party democracy and that the information was essential for the exercise and protection of the right to vote. Therefore, Parliament has failed to fulfil a constitutional obligation. Only the Constitutional Court is competent under its exclusive jurisdiction to make that finding. The minority judgment disagreed with the majority judgment's finding that the applicant was obliged to challenge PAIA. This is because PAIA is not the only legislation envisaged by the Constitution that must give effect to the right of access to information. It partially fulfils the right, but does not purport to fulfil it completely. Hence the applicant's approach to the Constitutional Court was competent.