



CONSTITUTIONAL COURT OF SOUTH AFRICA

City Power (Pty) Ltd v Grinpal Energy Management Services (Pty) Ltd and Others

CCT 133/14

Date of hearing: 18 November 2014

Date of judgment: 20 April 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 an application for leave to appeal against a decision of the Labour Appeal Court concerning the interpretation and application of the business transfer provisions of the Labour Relations Act (LRA) in relation to municipal entities.

The applicant, City Power (Pty) Ltd (City Power), awarded a tender to the first respondent, Grinpal Energy Management Services (Pty) Ltd (Grinpal), in 2003 for the supply of prepaid metering electricity systems in Alexandra. The second respondent is the National Union of Mineworkers (NUM), a registered trade union, and the further respondents are 41 former Grinpal employees.

When the original tender contracts between City Power and Grinpal lapsed in 2010, the two companies entered into additional service delivery agreements for the installation of more prepaid meters and for the maintenance of meters previously installed. This stood until 2012, when City Power informed Grinpal that it was terminating the contracts with immediate effect as Grinpal had allegedly submitted a fraudulent tax certificate. Despite Grinpal disputing the validity of the cancellation, the parties eventually decided to terminate the contracts and agreed that City Power would render the electricity services until a new service provider was appointed, using Grinpal's infrastructure. However, while City Power took over the operation, it refused to take transfer of the employees of Grinpal, in terms of the LRA.

Grinpal referred the matter to the Labour Court, arguing that – in terms of the LRA – because its business had been transferred as a going concern, City Power automatically took over its employees upon termination of the service delivery agreement. The Labour Court upheld Grinpal's application, finding that the business had been transferred, as contemplated in the LRA, because the infrastructure for conducting the business did not remain in the hands of Grinpal but rather in the hands of City Power, albeit temporarily. Thus the employees had been automatically transferred to City Power. On appeal, the Labour Appeal Court agreed that transfer of the business, and the consequent automatic transfer of the employees, did take place but raised a concern about the implications of this and similar decisions for organs of state such as municipalities who enter into outsourcing agreements for a defined period.

In this Court, City Power argued that since it was a municipal entity, which operated like a municipality, it was exempt from the application of the LRA in respect of transfers. It further argued that if the relevant sections of the LRA were applicable to it, this would be contrary to the employment and financial procedures it was obliged to follow in terms of the Municipal Systems Act and would impose constitutionally invalid budgetary constraints. Grinpal, on the other hand, argued that City Power is not a municipality, but a private company, and is not exempt from the operation of the relevant provisions of the LRA.

Tshiqi AJ, in a unanimous judgment, held that City Power is a municipal entity governed by the Municipal Systems Act, but this does not exempt it from the operation of the transfer provisions of the LRA. This Court found that the Municipal Systems Act is subservient to the LRA, which should prevail in all employment matters. Employers, including organs of state, should make the necessary arrangements for legal eventualities like the transfer provisions of the LRA. There are adequate safeguards available to municipalities in the LRA to allay the concerns expressed by the Labour Appeal Court. This Court concluded that there had been a transfer of a business as a going concern and, consequently, City Power automatically took over the employees. City Power's appeal was dismissed with costs.