

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 16/00

P VEERASAMY

Applicant

versus

ENGEN REFINERY

First Respondent

A P SHANGASE

Second Respondent

Decided on : 31 May 2000

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JUDGMENT

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O'REGAN J:

[1] The applicant applied for direct access to this Court in relation to the conduct of proceedings before a commissioner of the Commission for Conciliation, Mediation and Arbitration, and in particular, concerning the admissibility of a privately-made tape recording in those proceedings. We refuse direct access for the following reasons.

[2] The applicant, Mr Veerasamy, had been an employee of the first respondent, Engen Refinery, for more than twenty years until his dismissal on 22 September 1997. He was dismissed for gross misconduct in that he had, contrary to the policy of the first respondent, solicited and received car sound equipment from one of the first respondent's contractors. The applicant then approached the Commission for Conciliation, Mediation and Arbitration (CCMA)

for relief on the grounds that his dismissal was unfair. The CCMA, after hearing evidence and argument, held that his dismissal was not unfair. Dissatisfied with that decision, the applicant applied to the Labour Court for relief. The Labour Court dismissed his application with costs. The applicant then sought to appeal to the Labour Appeal Court, but leave was refused and his petition was dismissed.

[3] Thereafter the applicant approached this Court for direct access. The only issue raised in this application is whether the CCMA, in admitting a tape recording as evidence in the proceedings before it, infringed the applicant's constitutional right to privacy. The tape recording admitted by the CCMA was of a telephone conversation between the applicant and the contractor concerning the supply of the car sound equipment. The applicant argued that in relying on this evidence the CCMA infringed his constitutional rights and that on that basis, the decision of the CCMA should be set aside and he should either be reinstated in his employment or the matter should be referred back to the CCMA for the matter to be considered afresh. No other relief was sought by the applicant.

[4] If we disregard completely the tape recorded evidence, there can nevertheless be no doubt that the remaining evidence led by the first respondent in the CCMA established conclusively that the dismissal of the applicant was not unfair.

[5] Even if this Court were to be of the view that the applicant's constitutional challenge had merit, an issue upon which we expressly refrain from comment, there would be no basis to order either the reinstatement of the applicant or the rehearing of his case before the CCMA. In the circumstances, therefore, it is not in the interests of justice to grant access to this Court directly and we accordingly refuse the application.

Chaskalson P, Langa DP, Goldstone J, Kriegler J, Madala J, Mokgoro J, Ngcobo J, Sachs J, Yacoob J and Cameron AJ concur in the judgment of O'Regan J.