

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CCT10/06**

**African Christian Democratic Party**

**vs**

**The Electoral Commission and Others**

**Decided on 24 February 2006**

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**MEDIA SUMMARY**

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*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.*

The applicant, a political party, approached the Court seeking leave to appeal from a decision of the Electoral Court. The Electoral Court had upheld a decision of the Electoral Commission ruling that the applicant was disqualified from contesting the imminent local government elections in the Cape Metropolitan area. Oral argument in the matter was heard yesterday afternoon. The judgment has been prepared in haste.

The question raised was whether the applicant had complied with the provisions of sections 14 and 17 of the Local Government: Municipal Electoral Act, 27 of 2000. Those provisions require a party (and ward candidates) who contest an election to lodge with the Commission a deposit as prescribed together with a notice of intention of contesting the election and a party list. The deposit payable for the Cape Metro is R3000. The date by which these things had to be done for these elections was 19<sup>th</sup> January 2006. On that date, the applicant had lodged its notice of intention to oppose, its party list and candidate nomination forms for all 105 wards in the Cape Metro. It did not lodge a separate deposit in respect of Cape Town municipality. However, on that date, it was common cause the Electoral Commission was holding unallocated funds in an amount of R10 000 that had been deposited by the applicant as deposits in respect of municipalities it had subsequently decided not to contest.

The Electoral Commission took the view that the applicant had not complied with the provisions of the statute and disqualified it from participating in the Cape Town elections. The applicant unsuccessfully applied to the Electoral Court for the decision to be set aside. The applicant then approached this court seeking leave to appeal.

O'Regan J writing for a majority of the Court (Langa CJ, Moseneke DCJ, Madala J, Mokgoro J, Ngcobo J, Nkabinde J, Sachs J, Van der Westhuizen J and Yacoob J) holds that the provisions of the Municipal Electoral Act must be construed in the light of their specific purpose understood in the light of the overall elections framework and the

constitutional rights and values relevant to elections. She concludes that the surplus held by the Electoral Commission constituted compliance with the obligation to pay a deposit within the meaning of the Municipal Electoral Act.

During the hearing, the Court requested an affidavit from the Commission indicating what the consequences of an order in favour of the applicant would be. The Court received an affidavit this morning from the Electoral Commission setting out what steps would need to be taken to give effect to the order. While it is clear from that affidavit that there is much to be done, the Commission does not state that it will render the elections impossible.

The Court accordingly upholds the appeal and declares that the applicant is entitled to contest the elections in the Cape Metropolitan area on 1 March 2006. The Electoral Commission is directed to take all reasonable steps to give effect to the order.

In a separate dissenting judgment, Skweyiya J finds that what is required is that regardless of which process a political party chooses to follow in registering for the election, payment must be made in respect of specifically identified municipalities. No payment was made by the ACDP in respect of the Cape Town Metro before the cut off date for registrations, therefore the applicant failed to comply. He further finds that the Commission has no discretion to condone non-compliance with the time period prescribed. In making this finding he emphasises the importance of compliance with the electoral timetable of the Commission, and says that the process itself is as important as the exercise of the citizen's right to vote. Accordingly he finds that the ACDP should not be enrolled in the Cape Town Metro election.