



CONSTITUTIONAL COURT OF SOUTH AFRICA

AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others

CCT 48/13

**Date of hearing: 19 March 2015
Date of judgment: 24 March 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 the review of a Request for Proposals (RFP). This RFP was issued in respect of a large-scale public procurement tender for the payment of social grants.

Previously, in *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* [2013] ZACC 42, this Court set aside the award of a tender by the South African Social Security Agency (SASSA) to Cash Paymaster Services (Pty) Ltd (Cash Paymaster) because it was unlawful, but did not rule on the appropriate remedy. Subsequently, in *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* [2014] ZACC 12 (the second *AllPay* decision), this Court declared the contract for the payment of social grants between SASSA and Cash Paymaster invalid and ordered that the tender process be re-run. The order emphasised that there must be no disruption to the payment of existing social grants to beneficiaries.

The declaration of invalidity of the contract was suspended to allow SASSA an opportunity to re-run the tender process and take a decision on whether to award a new contract. This was to be done under the supervision of this Court.

SASSA issued a new RFP in respect of the invalidated tender. Cash Paymaster, the applicant in this matter, approached this Court directly seeking an order declaring the

new RFP invalid because it does not comply with the Court's order in the second *AllPay* decision and is incompatible with the payment system in terms of which social grants are distributed.

At the hearing on Thursday, 19 March 2015, the parties negotiated a draft order on the further conduct of the matter, which was then presented to the Court. The first four paragraphs of the draft order, to which all the parties agreed, set out a timetable and process for completion of the new tender process. The Court made those paragraphs an order of Court but reserved judgment on the fifth paragraph of the order, the inclusion of which was opposed by Cash Paymaster.

The fifth paragraph provided that the parties may only approach this Court for further relief if it is in the interests of the beneficiaries. The argument in favour of the inclusion of this paragraph was grounded in the need for swift finalisation of the tender process in the interests of beneficiaries.

The Court found that the concern, although legitimate, that any further delay benefitted Cash Paymaster, was addressed by the parts of the order already agreed to. In addition, Cash Paymaster can only pursue its remaining objections in limited circumstances. Whether it takes further action or not, the finalisation of the process will not be significantly affected.

The Court further confirmed that it retained supervisory jurisdiction in terms of its order in the second *AllPay* decision. Therefore, it added a paragraph to the order specifying that only this Court may be approached for further relief, in which event the interests of beneficiaries will be paramount in deciding whether to entertain the application.