



CONSTITUTIONAL COURT OF SOUTH AFRICA

CUSA v Tao Ying Metal Industries (Pty) Ltd; Pooe, M NO; Commission for Conciliation, Mediation and Arbitration and The Metal and Engineering Industries Bargaining Council

**Case CCT 40/07
[2008] ZACC 15**

Judgment Date: 18 September 2008

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 case involving a dispute between the Commercial Workers Union of South Africa (CUSA) and Tao Ying Metal Industries (Tao Ying). Certain industry-wide minimum wages were set in a 1998 bargaining council agreement applicable to the parties. (A bargaining council is a forum for the collective negotiation of labour matters within a specific industry.) At issue was whether Tao Ying is obliged to pay the minimum wages set out in the 1998 agreement or whether it has been validly granted exemptions from this obligation.

The relationship between the parties was previously regulated by a 1980 agreement. Employers were permitted to apply for exemptions from some of its provisions. Tao Ying applied for and was granted certain exemptions, including one permitting it to pay wages lower than the minimum wages set out in that agreement. On 14 April 1998, the 1980 agreement was replaced by the 1998 agreement. CUSA claimed that Tao Ying was now obliged to pay the minimum wages set out in the 1998 agreement. Tao Ying's position was that the exemptions granted remained in force. CUSA claimed that the exemptions were invalid because it had not been consulted prior to their being granted.

A Commissioner in the Commission for Conciliation, Mediation and Arbitration (CCMA) found that the minimum wage exemption relied upon by the Tao Ying had expired and held that it was obliged to pay the workers the wages set out in the 1998 agreement. The Labour Court declined Tao Ying's application to have this decision reviewed. The Labour Appeal Court heard the matter and upheld the decision of the Commissioner. On appeal, the Supreme Court of Appeal raised, of its own accord, the issue of the Commissioner's jurisdiction and held by majority that the Commissioner lacked jurisdiction to consider the validity of the exemptions. It also held, by majority, that the exemptions were still valid and applied to the 1998 agreement. CUSA applied to this Court for leave to appeal against this decision.

In this Court, CUSA argued that the Supreme Court of Appeal was not entitled to raise the issue of jurisdiction of its own accord, and that the Commissioner had correctly found that the exemptions had expired. Tao Ying argued that the dispute did not raise a constitutional issue and that the Commissioner's decision should be set aside on review because she had failed to apply her mind to the issue of the validity of the exemptions.

The majority judgment written by Ngcobo J, in which all the judges except O'Regan J concurred, found that the case raised important constitutional issues which affect the resolution of labour disputes and that leave to appeal should be granted. He held that, whilst a reviewing court is ordinarily limited to deciding issues raised by the parties, a reviewing court is entitled, of its own accord, to raise a point of law and require the parties to deal with it if the parties have proceeded on the wrong perception of what the law is. However, even if the Supreme Court of Appeal was entitled to raise the issue of jurisdiction, Ngcobo J held that the Commissioner had resolved the dispute on a point she clearly did have jurisdiction to decide, namely that the exemptions had expired.

Ngcobo J then examined whether the Commissioner had properly applied her mind to this question. He held that she had, and that the exemption had indeed terminated when the 1980 agreement expired. Ngcobo J therefore upheld the Commissioner's decision and concluded that Tao Ying was not exempted from the 1998 agreement's provisions on minimum wages.

O'Regan J dissented. She held that this Court should only hear disputes concerning the enforcement of collective bargaining agreements where they materially concern the right to engage in collective bargaining. This dispute did not affect that right, but in her view two other constitutional issues were raised.

The first concerned the power of a reviewing court to raise issues of its own accord. O'Regan J held that a court may of its own accord raise a point going to jurisdiction in review proceedings where a material irregularity appears on the face of the record, provided that parties are given a fair opportunity to address the issue. The second issue was whether the Commissioner had properly applied her mind to the validity of the exemptions. O'Regan J held that she had not. Further, she held that this Court could not reach a finding that the exemptions were invalid without considering the bargaining council rules in terms of which the exemptions were granted, which were not part of the record before this Court. O'Regan J would therefore have dismissed the appeal.

The appeal was accordingly upheld.