



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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National Student Fund Aid Scheme v Moloi and Others (574/2022 & 194/2022) [2024] ZASCA 66
(03 May 2024)

Today the Supreme Court of Appeal (SCA) upheld an appeal against an order granted by the Gauteng Division of the High Court, Pretoria (high court), Pretoria, which had set aside eligibility criteria applicable to students for a bursary administered by the National Student Financial Aid Scheme (NSFAS) in consultation with the Minister of Higher Education and Training for the 2021 university academic year.

At the start of the 2021 university academic year NSFAS revised and amended the guidelines that were in place at the end of the 2020 academic year. In terms of those guidelines, postgraduate LLB was a funded degree under the bursary scheme. In revising the eligibility criteria NSFAS excluded the LLB and other postgraduate degrees from the bursary scheme funding. In determining the new eligibility criteria NSFAS acted in consultation with the Minister as mandated and empowered to do so in terms of section 4(b) of the National Student Financial Aid Scheme Act 56 of 1999.

Although NSFAS had managed student funding for some time prior to 2018, the bursary scheme administered terms of the guidelines was only introduced in 2018 and the first version of the guidelines was published and became effective at the start of the 2019 academic year. The guidelines consisted of general regulatory terms governing eligibility for funding under the scheme. The structure and content was more or less the same every year. However limited changes were made every year. In terms of the general provisions, the scheme afforded financial support to students from poor and working class backgrounds. A student received funding once they met all the qualifying criteria. Qualifications approved for funding were generally undergraduate qualifications. Postgraduate qualifications were excluded from funding.

At the start of the 2021 academic year the Minister issued two media statements pertaining to NSFAS funding. In the first media statement, released on 8 March 2021, he warned of changes that would be effected to the 2021 guidelines as a result of a shortfall in the budget allocated to the bursary scheme for the 2021 academic year. In the main, the shortfall was a result of the COVID pandemic. During the lockdown period the scheme had to continue paying student allowances even when universities were closed. In addition the preceding academic years had to be extended without allocation of additional funds for the extended academic periods. There was also an increase in the number of students qualifying for funding as a result of job losses by their previous funders because of the COVID 19 pandemic.- Furthermore, prior to the onset of the pandemic National Treasury had started to implement budget cuts as a result of relentless deterioration of the economy.

In the second media statement the Minister advised that the National Cabinet had approved reprioritisation of the budget for the Department of Higher Education and Training. As a result all qualifying first time entry students, together with qualifying continuing students would be funded. However all postgraduate qualifications would not be funded under the scheme. The three respondents in the appeal were registered for postgraduate LLB at the University of the Witwatersrand in 2021. They brought the application for review of the revised criteria, particularly the exclusion of postgraduate LLB from funding under the scheme.

In upholding the appeal by NSFAS and the Minister, the Supreme Court of Appeal found that the revision of the eligibility criteria was an exercise of executive powers. The court found that the Minister and NSFAS had exercised their powers under section 4(b) of the NSFAS Act rationally, for the purpose for which the powers were conferred under the Act and reasonably given the economic constraints prevailing at the time. Furthermore, the consultations that the Minister had held with Universities South Africa and South African Union of Students prior to revision of the eligibility criteria, satisfied the requirement of procedural fairness. Because of urgency, individual potentially affected students could not be invited to make representations. The court also held that the three students did not, in any event qualify for funding. The first respondent had not applied for funding. The second respondent did not meet the financial eligibility criteria. And the third respondent also did not meet the funding criteria. The court found that the respondents had not made out a proper case for their claim to legitimate expectation of funding under the scheme. The order of the high court was substituted with an order dismissing the respondent review application.

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