

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 29/97

CERTIFICATION OF THE AMENDED TEXT OF THE CONSTITUTION OF THE WESTERN CAPE, 1997

Heard on : 18 November 1997

Decided on : 18 November 1997

JUDGMENT

THE COURT¹

[1] On 2 September 1997 this Court issued an order declining to certify that the whole of the constitutional text of the Constitution of the Western Cape, 1997, passed by the legislature of that province on 21 February 1997, complied with section 143 of the Constitution of the Republic of South Africa, 1996. The refusal to certify was in respect of a limited number of provisions of the constitutional text.

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This is the unanimous judgment of all the members of the Court.

[2] On 11 September 1997 an amended text of the Constitution of the Western Cape was passed by a majority of at least two thirds of the members of the legislature of that province as required by section 142² of the Constitution and its Speaker submitted this amended text to this Court for certification in terms of section 144.

[3] This Court once again afforded an opportunity to the Government of the Republic of South Africa and to any political party represented in the legislature of the province of the Western Cape to make representations to the Court in regard to whether the amended text should or should not be certified. No objection has been raised to such certification.

[4] Counsel appearing for the Speaker of the legislature of the province of the Western

² “142. Adoption of provincial constitutions

A provincial legislature may pass a constitution for the province or, where applicable, amend its constitution, if at least two thirds of its members vote in favour of the Bill.”

Cape has submitted that all the provisions of the amended text comply with section 143³ and has requested us to certify such text.

[5] The amendments to the text of the provincial constitution deal with the provisions which were identified in our judgment of 2 September as failing to comply with section 143. The only alteration to the previous text which was not occasioned by our judgment is an amendment to Annexure A to the provincial constitution. It deals with the composition of the provincial cabinet during the period between the coming into force of

³ “143. Contents of provincial constitutions

- (1) A provincial constitution, or constitutional amendment, must not be inconsistent with this Constitution, but may provide for—
 - (a) provincial legislative or executive structures and procedures that differ from those provided for in this Chapter; or
 - (b) the institution, role, authority and status of a traditional monarch, where applicable.
- (2) Provisions included in a provincial constitution or constitutional amendment in terms of paragraphs (a) or (b) of subsection (1)—
 - (a) must comply with the values in section 1 and with Chapter 3; and
 - (b) may not confer on the province any power or function that falls—
 - (i) outside the area of provincial competence in terms of Schedules 4 and 5; or
 - (ii) outside the powers and functions conferred on the province by other sections of the Constitution.”

the provincial constitution and the second election for the provincial parliament. The provincial cabinet is an executive structure. The provisions dealing with the manner in which it is to be composed have to comply with the values in section 1 and the provisions of Chapter 3 of the Constitution, but save for this, they do not have to be consistent with other provisions of the Constitution. We are satisfied that these amendments comply with section 143.

[6] We have scrutinised the amended text and are unanimously of the view that all its provisions now comply with section 143. We accordingly certify that the whole of the amended constitutional text of the Constitution of the Western Cape, 1997 as passed by the legislature of that province on 11 September 1997 complies with section 143 of the Constitution.

For the Speaker of the Western Cape Legislature:

J J Gauntlett SC instructed by
the State Attorney

