

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Radio Pretoria v the Chairperson of the Independent Communications Authority of South Africa and the Independent Communication Authority of South Africa

CCT 38/04

Decided on **December 2004

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.

This is an application for leave to appeal to this Court brought by Radio Pretoria against the decision of the Supreme Court of Appeal (SCA). The SCA dismissed the appeal against the judgment and order of the Pretoria High Court (High Court) which had refused to set aside the decision of the Independent Communications Authority of South Africa (ICASA) not to grant Radio Pretoria a temporary sound broadcasting licence.

Radio Pretoria is a community broadcaster founded for the purpose of serving the needs of what it calls the “Boere-Afrikaner” community. It began operating in 1993 on a temporary broadcasting licence issued under the previous dispensation. Before 1995, it interrupted its broadcasting activities in order to apply for a new licence under the new dispensation. In 1995 Radio Pretoria was granted its first one year temporary community broadcasting licence. In the years between 1996 and 1999, the Independent Broadcasting Authority (IBA) granted it temporary community broadcasting licences annually and later issued additional broadcasting signal distribution licences to twelve signal distribution points.

Before the High Court, Radio Pretoria had sought to review the decision of ICASA not to grant it a 5th temporary annual licence for the period ending 29 April 2000. The High Court held that ICASA properly applied its mind in refusing the broadcast licence and dismissed the application but granted leave to appeal to the SCA.

On 30 September 2003, ICASA refused to grant the application of Radio Pretoria for a 4-year broadcast licence. In May 2004 ICASA furnished its reasons for refusing to grant the 4-year broadcast licence and called on Radio Pretoria to terminate its broadcasting service by 23 June 2004. Thereafter Radio Pretoria was granted several interim orders by the High Court to keep the broadcast station alive and in business.

Before the SCA, Radio Pretoria amended its notice of appeal and asked for interim relief pending final adjudication of its dispute with ICASA on the 4-year licence. Importantly, the review application against the decision on the 4-year licence had not been made by the time the SCA appeal was heard. At the hearing Radio Pretoria invited the SCA to decide the appeal on ICASA’s refusal of the 1-year licence and the 4-year licence. The SCA sought an assurance from counsel for both parties that the facts before the court on the first issue were identical to the facts to be presented in a court on the second issue. None was given. The SCA found that there was no longer a live controversy between the parties as a decision on a 1-year broadcast licence that had long expired and would have no practical value or use.

Before this Court Radio Pretoria says the decision of the SCA violates the rights to equality, freedom of expression, access to courts, just administrative action and the right to appropriate relief. It says that it has not enjoyed equal protection before the SCA, the 4-year licence issue is a real dispute which it should have decided, and that SCA should have protected its freedom of expression in the face of a refusal to be granted a 4 year licence.

The application does raise very important constitutional issues. The Court agrees that the first issue concerning the 1-year temporary broadcasting licences is no longer a live one. It is moot. The second issue raises a very important dispute on freedom of expression and the question whether it may be properly limited by a rule which requires prescribed labour practices. That matter is most worthy of adjudication. But the dispute is not before the Court for adjudication. The review proceedings have not commenced though Radio

Pretoria is in possession of the reasons for refusal of the 4-year licence application. The full facts underpinning the dispute are not on the record. Moreover the respondent has no case yet to meet.

As such, the Court finds no practical purpose to which a decision on the temporary licence may now be put. Nor is it appropriate to decide the dispute over the 4 year licence before it is ripe for hearing. It is not in the interests of justice to grant this application. Accordingly, the application for leave to appeal is refused and no order as to costs is made.