



CONSTITUTIONAL COURT OF SOUTH AFRICA

Leon Joseph and Others v City of Johannesburg and Others

Case CCT 43/09

Date of Judgment: 9 October 2009

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.

On Friday 9 October 2009, the Constitutional Court delivered judgment in an application for leave to appeal against a decision of the South Gauteng High Court, Johannesburg (High Court) which held that there is no obligation on the City of Johannesburg and its service providers to afford procedural fairness to tenants with whom the service provider has no contractual relationship before taking a decision to disconnect their electricity supply.

The applicants are all tenants in a block of flats in Johannesburg (Ennerdale Mansions) owned and let by the fourth respondent, Mr Thomas Nel. The applicants paid their electricity bills to Mr Nel as part of their rent accounts and had kept up with their electricity payments at the time of the disconnection. Mr Nel is contracted with the second respondent, City Power, for the supply of electricity to the building and had accumulated arrears of approximately R400 000. As a result, on 8 July 2008, the electricity supply to Ennerdale Mansions was disconnected by City Power. The tenants received no prior notice of the disconnection. They have been living without electricity for some 12 months and continue to live in Ennerdale Mansions because they cannot afford to leave.

In this Court, the applicants contended that the Promotion of Administrative Justice Act 3 of 2000 (PAJA) required City Power to afford them procedural fairness before taking a decision to disconnect their electricity because the decision materially and adversely affected their rights. They also challenged the validity of the City's Credit Control By-laws (2005) insofar as they restricted the duty to afford procedural fairness only to "customers" of City Power. City Power contended that "customer" in the By-Laws could not be read to include persons who do not have a contractual relationship with a service provider, and that this limitation was justified by the City's policy of debt-collection. City Power opposed the

relief sought on the basis that they owe no duty of procedural fairness to the tenants, but only to the landlord with whom they have contracted.

Skweyiya J, writing for a unanimous Court, held that when City Power supplied electricity to Ennerdale Mansions, it did so in fulfillment of the constitutional and statutory duties of local government to provide basic municipal services to all persons living in the City. When the applicants received electricity, they did so by virtue of their corresponding public law right to receive this basic municipal service. Accordingly, in depriving them of a service which they were already receiving as a matter of right, City Power was obliged to afford them procedural fairness before taking a decision which would materially and adversely affect that right.

Skweyiya J held that, on the facts of this case, procedural fairness required that applicants were entitled to 14 days' pre-termination notice in the form of a physical notice placed in a prominent position in the building. Implicit in affording pre-termination notice is that users of the municipal service may approach the City, within the notice period, to challenge the proposed termination or to tender arrangements to pay off arrears.

With regard to the constitutional validity of the municipal by-laws regulating the supply of electricity in the City, Skweyiya J held that the City's Credit Control and Debt Collection By-laws (2005) can be read consistently with PAJA so that procedural fairness is afforded not only to customers of City Power but to any person whose rights would be materially and adversely affected by the termination of electricity supply. The supply of electricity in the City is also regulated by the City's Electricity By-Laws (1999). The judgment holds that to the extent that the Electricity By-laws permit the termination of electricity supply "without notice", it is inconsistent with PAJA and section 33 of the Constitution. This invalidity is cured by severing the words "without notice" from by-law 14(1), which must be read in the light of PAJA to require pre-termination notice.

In the result, Skweyiya J granted the application for leave to appeal and upheld the appeal, setting aside the order of the High Court. The termination of electricity supply to Ennerdale Mansions was declared to be unlawful, and the City was ordered to reconnect the electricity supply to the building forthwith.