

Tripartite steering committee and Another v Minister of basic education and Others (High Court; 2015)

Full citation

[Tripartite Steering Committee and Another v Minister of Basic Education and Others \(1830/2015\) \[2015\] ZAECGHC 67; 2015 \(5\) SA 107 \(ECG\); \[2015\] 3 All SA 718 \(ECG\) \(25 June 2015\)](#)

Forum / Country

Eastern Cape High Court, South Africa

Date of decision

25 June 2015

Summary of decision

In a precedent-setting decision, the High Court held that the right to basic education is 'meaningless' unless learners had access to transport to and from school, at government's expense, in appropriate cases.

Plasket J set aside the decision of the Department of Education to refuse to provide scholar transport to the applicant schools and, in the case of one of them, to provide scholar transport to qualifying learners as their applications had been approved. The Court directed the respondents to reconsider the refusal decision in light of a new policy on provision of transport that the court directed the Department of Education to develop and adopt.

Significance to the right to education

The High Court's decision extended the constitutional right to 'basic education' to include the means necessary by which scholars are able to access that education, by finding that, where scholars' access to schools is hindered by distance and an inability to afford the costs of transport, the state is obliged to provide transport to them in order to meet its obligations in terms of s 7(2) of the Constitution, to promote and fulfil the right to basic education.

It underscores that it is the government's prerogative to develop and implement policies determining the criteria based on which learners could qualify for state paid school transport. However, the policies have to take into account a variety of benchmarks and be applied flexibly in order to ensure that the fulfilment of the constitutional right to basic education is protected. The courts had the right to scrutinise those policies for their constitutional compliance.

Issues & keywords

School transport; Right to basic education; Accessibility; Free education

Context

In a policy adopted by the South African government in 2003 it was announced that school transport was to be provided by the provincial government. Since then various draft guidelines have been formulated to implement that decision at a local level but have never been converted into legislation.

Facts

A number of schools from the Mdantsane area in the Eastern Cape and the Fort Beaufort district had applied for scholar transport. The Department of Education had, however, rejected their applications without any explanation or, in the case of one such school, had approved the application but failed to provide transport. In June 2015, the Legal Resources Centre ('LRC'), acting on behalf of those schools, sought an order in the Grahamstown High Court granting scholar transport to 172 learners.

The applicants have also requested that the High Court requires the Department of Education to develop and publish the criteria used to determine which learners qualify for the learner transport programme as well as publish the data that will enable schools to determine which learners would qualify for transport.

Issue

The court considered the following issues:

- Is school transport a right which is within the scope of the constitutional right to basic education?
- Was the decision of the respondents to refuse school transport to learners valid and if it was not valid should the court substitute its own determination for the decision of the respondents?
- Adoption of the new policy on the provision of school transport and the implementation mechanisms.

Relevant legal instruments:

- Section 7 (2) of the Constitution of the Republic of South Africa (that the state must respect, protect, promote and fulfil the rights in the Constitution)
- Section 29(1)(a) of the Constitution (setting out that everyone has the right to basic education, including adult education)
- Sections 38(a), (b), (c) and (d) of the Constitution (regarding the standing in court in its own interest and in the public interest)
- Section 6.2 and 8 of Promotion of Administrative Justice Act 3 of 2000 (regarding judicial review of administrative decisions)

Case law cited

- *Ex parte Gauteng Provincial Legislature: In re dispute concerning the constitutionality of certain provisions of the Gauteng School Education Bill of [1996] ZACC 4; 1995 1996 (3) SA 165 (CC)* (affirming that ‘a positive right that basic education be provided for every person’ by the state was created and ‘not merely a negative right that such a person should not be obstructed in pursuing his or her basic education’)
- *Governing Body of the Juma Masjid Primary School & others v Essay NO & others (Centre for Child Law & another as amici curiae)* 2011 (8) BCLR 761 (CC) (holding that the right to basic education is an important socio-economic right and that access to school – an important component of the right of basic education guaranteed to everyone by section 29(1)(a) of the Constitution – is a necessary condition for the achievement of this right.)
- *Trackstar Trading 256 (Pty) Ltd t/a Mtha-Wethemba v Head of the Department of Transport, Province of the Eastern Cape & others* ECG 4 December 2014 (case no. 3611/13) unreported (noting that if the provincial government does not provide scholar transport ‘many thousands of scholars would simply not be able to attend school’.)
- *Section 27 & others v Minister of Education & another* [2012] 3 All SA 579 (GNP) (regarding provision of learner support material in the form of text books as an essential component to the right to basic education; affirming that for the right to be meaningful such issues as infrastructure, learner transport, security at schools, nutrition and such related matters would need to be considered its essential component)

Decision

On the first issue, the Court held that the right to education is meaningless without transport to and from school at state expense in appropriate cases. Where learners’ access to schools is hindered by distance and an inability to afford the costs of transport, the state is obliged to provide transport to them in order to meet its obligations, in terms of section 7(2) of the Constitution, to promote and fulfil the right to basic education.

On the second point, the court held that the decision of the authorities to refuse transport to learners was to be set aside because it was arbitrary in the sense that a blanket decision was taken without a consideration of the merits of each applicant’s application. However, the Court declined to substitute its own decision and referred the matter to be reconsidered for a fresh decision by the local education authority. Plasket J stressed that, consistent with the doctrine of the separation of powers, administrative decisions are entrusted to the executive.

Finally, the Court directed the provincial government to complete the process of adopting the new policy, to publish it and to report to the court on compliance with these duties. However, the Court refused to compel the education authorities to adopt any specific implementation procedures on the grounds that the development and formulation of policy lies within the exclusive domain of the executive branch of government. When, however, policy, once adopted and implemented, has an impact on rights, a court may scrutinise the policy for constitutional compliance.

Impact

Following the Court's decision, it was reported that the South African Government determined to provide transport to all 172 named learners. The decision underscores that concrete relief can be obtained through education litigation in South Africa, even if courts do not grant the full extent of supervisory orders sought against the State.

Commentary

Plasket J expressed his approval of earlier decisions (cited above) which noted that the right to basic education would be meaningless if such issues as infrastructure, learner transport, security at schools, nutrition and such related matters were not considered to be an essential component of that right.

The Court's decision does not consider its alignment with or inspiration from international law. It is worth noting however that it has been reported that LRC, which represented the applicants in the above subject case, have been granted leave to intervene at the European Court of Human Rights ('ECtHR'), in a matter against the government of Hungary. The case of *Amanda Kosa v Hungary* challenges a possible infringement of the right to education. LRC's input will focus on one of the questions for the ECtHR to consider, being whether the applicant has been denied the right to education as a consequence of the cancellation of the bus service connecting her neighbourhood with a school providing integrated education for children from various social backgrounds.

Additional resources

- [South Africa Government to Provide Learners with Scholar Transport Following Important Court Decision](#)
- [Long Walk to Education – Scholar Transport Now an Element of the Right to Basic Education in South Africa](#)
- [European Court of Human Rights to consider Right to Education](#)

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