



CONSTITUTIONAL COURT OF SOUTH AFRICA

AllPay Consolidated Investments Holdings (Pty) Ltd and Others v The Chief Executive Officer of The South African Social Security Agency and Others

CCT 48/13

Date of hearing: 11 February 2014

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 11 February 2014 at 10:00 the Constitutional Court will hear argument concerning the appropriate relief to be granted following its earlier finding that an award of a large-scale public procurement tender had been unlawful.

Previously, AllPay Consolidated Investment Holdings (Pty) Ltd (AllPay) challenged an award of a tender by the South African Social Security Agency (SASSA) to Cash Paymaster Services (Pty) Ltd (CPS). The tender, one of the largest in South Africa's history, was for the provision of social grants to approximately 15 million beneficiaries. On 29 November 2013 this Court declared the award of the tender to CPS unlawful. However, the Court found that it would be inappropriate to decide the issue of remedy in the absence of further evidence and argument from the parties. As a result, the Court set a return date and requested that the parties furnish evidence on affidavit and file further submissions to assist the Court in determining the appropriate remedy.

AllPay argues that given the nature of the irregularities in the tender, the only just and equitable remedy is to suspend temporarily the declaration of invalidity to allow for a fresh tender process to run and for a new contractor to take over. AllPay maintains that CPS is obliged to continue to perform under its existing contract with SASSA to ensure that beneficiaries are paid during the period of suspension.

SASSA and CPS contend that practical considerations weigh against this Court risking the interruption of the payment service and the quality of the service provided to beneficiaries. As such, CPS should be allowed to run its contract to completion. SASSA and CPS agree that this

can only be achieved by either declining to set aside the tender award or suspending the declaration of invalidity for the remainder of the contractual period.

The submissions of Corruption Watch, as first amicus curiae (friend of the Court), focus on the need to protect and uphold the rule of law. Corruption Watch has also requested that SASSA provide information relating to the steps taken, if any, to investigate certain irregularities that were raised in its previous submissions to this Court.

The second amicus curiae, the Centre for Child Law (Centre), agrees that it would be just and equitable to suspend the declaration of invalidity until the end of the existing contractual period. According to the Centre, this Court should not consider any remedy that is likely to affect the timely and uninterrupted payment of social grants. In particular, it maintains that it would be inappropriate for the Court to order a new tender process if this would require re-registration of the beneficiaries. If the Court does shorten the duration of the contract, the Centre argues that CPS is under a duty to continue to pay social grants to beneficiaries until the commencement of the new contract.