



CONSTITUTIONAL COURT OF SOUTH AFRICA

Association of Mineworkers and Construction Union and Others v Chamber of Mines of South Africa and Others

CCT 87/16

Date of judgment: 21 February 2017

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 21 February 2017 the Constitutional Court handed down judgment in an application for leave to appeal against a judgment and order of the Labour Appeal Court (LAC). The legal question was whether a collective agreement concluded between the Chamber of Mines (Chamber), on behalf of certain gold mining companies and the majority trade unions in the gold mining sector overall could be extended to bind the members of the Association of Mineworkers and Construction Union (AMCU), even though AMCU had majority representation at certain individual mines.

The collective agreement was extended in terms of section 23(1)(d) of the Labour Relations Act (LRA). This stipulates that a collective agreement binds even employees who are not members of the unions party to the agreement provided those unions “have as their members the majority of employees employed by the employer in the workplace.”

The crucial issue was whether a “workplace” in the statutory provision referred to each individual mining operation, or all the mining operations of each mining company, taken together. If each individual mine was a “workplace” under the statute, then AMCU had majority representation and would not be bound by the agreement. But if the workplace was each mining organisation as a whole, with individual mines included, then AMCU was a minority union and was bound by the terms of the agreement, one of which prohibited striking whilst the agreement was in force.

Unhappy with the terms of the agreement, AMCU gave notice of a strike. The Chamber then applied to the Labour Court to interdict the strike as a violation of the collective agreement.

The Labour Court first granted an interim interdict (Cele J). Later, the Court (Van Niekerk J) held that the different mining operations constituted a single “workplace” for each mining company in terms of section 23(1)(d). Applying the statutory definition of “workplace”, the Court concluded that the operations were not independent of one another in terms of size, function or organisation. The agreement was validly extended and the strike was thus unlawful. The Labour Court also rejected the constitutional challenge. The Court found that although a fundamental right, the right to strike is not an end in itself, and can be limited. The LRA justifiably limited this right on the basis of the principle of majoritarianism. This means that at times certain minority rights must be limited to give way to the demands and interests of the majority, and is central to the LRA.

The LAC dismissed AMCU’s appeal, extending and endorsing the findings of the Labour Court.

In a unanimous judgment by Cameron J, (Nkabinde ACJ, Cameron J, Froneman J, Jafta J, Madlanga J, Mbha AJ, Mhlantla J and Zondo J concurring) the Court granted AMCU leave to appeal, but dismissed the appeal.

The Court held that the statutory definition of “workplace” applied to section 23(1)(d). Whether each AMCU-majority mine constituted a separate “workplace” depended not on the mines’ geographic location or where the individual workers worked, but rather on the functional signifiers of independence the definition listed. AMCU failed to identify any independent interpretative indicators that the definition did not apply. It invoked constitutional considerations. But constitutional principle and the statute’s objectives didn’t point away from the definition’s focus on workers as a collective, wherever they may work. They pointed towards it.

The Court agreed with AMCU that applying a statutory definition to the facts is seldom purely “a question of fact”. Rather, applying a definition is itself an interpretative task in which constitutional values and statutory objectives remain present. But this did not lead to a different outcome. There was no reason (constitutional or otherwise) for this Court to overturn the findings of the Labour Court and the Labour Appeal Court; specialist tribunals whose findings are owed due consideration.

The Court also rejected AMCU’s constitutional challenge. First, the Court held that any infringement of the right to strike was reasonable and justifiable based on the principle of majoritarianism which, in this context, benefitted orderly collective bargaining. That majoritarianism was functional to enhanced collective bargaining was internationally recognised. Second, the limitation a section 23(1)(d) agreement imposed on the right to strike was strictly limited – in both scope and time. The Court noted that a collective agreement extended to non-parties did not apply to them indefinitely. It applied only for the duration of the agreement and regarding the specific issues it covered.

The Court found that AMCU's rule of law challenge was in essence a challenge to the rationality of section 23(1)(d). It invoked the foundational value of the rule of law to argue that the provision violated the principle of legality. This was because, amongst other things, it permitted private actors the right to effectively exercise public power arbitrarily, that is without observance of the rule of law. The Court rejected AMCU's contention that this was the effect of section 23(1)(d). Since the provision was a justifiable limitation on the right to strike, it followed that it was also necessarily rational.

In addition, AMCU's argument was incorrect. Permitting a private actor to exercise public power did not inherently violate the rule of law. Non-state organs may and do exercise public power. And safeguards exist to monitor and scrutinise this exercise. The actual exercise of the power the provision confers on private parties can never occur lawlessly. It is subject to review under the principle of legality.

The Court found that conclusion of an agreement under section 23(1)(d) constituted the exercise of public power and was subject to review under the principle of legality. The principle requires that all exercises of public power – including non-administrative action – conform to minimum standards of lawfulness and non-arbitrariness.

For these reasons, the Court held that the agreement was validly extended to AMCU members at the five AMCU-majority mines, and the relevant statutory provisions were constitutionally compliant. The appeal was dismissed with no order as to costs.