



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 1 October 2015
STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

DDP Valuers (Pty) Ltd v Madibeng Local Municipality (233/2014) [2015] ZASCA 146 (1 October 2015).

The Supreme Court of Appeal (SCA) today upheld an appeal against a judgment of the Gauteng Division of the High Court, Pretoria. The appeal related to the question whether a regulation of the municipality constituted an internal remedy as contemplated in section 7(2) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

DDP Valuers (Pty) Ltd (appellant) and Dijalo Property Valuers (second respondent) and several other entities tendered for a contract to perform services for the first respondent, the Madibeng Local Municipality (Municipality). The appellant and the second respondent were shortlisted. The tender was awarded to the second respondent. Pursuant thereto a Service Level Agreement was concluded between the Municipality and the second respondent.

Upon learning of the Municipality's award of the tender to the second respondent, the appellant lodged an objection in terms of reg 49 of the Municipal Supply Chain Management Regulations (the regulations). There was no response to the objection. The appellant proceeded to launch an application for the review and setting aside of the tender award in the Gauteng Division of the High Court, Pretoria (Makgoba J) on a number of grounds including that the tender was incorrectly evaluated. The Municipality and second respondent opposed the application raising a preliminary point of law that the appellant had failed to first exhaust internal remedies of the Municipality in terms of s 7(2) PAJA which requires prior exhaustion of internal administrative remedies before approaching a court for judicial review. The Municipality and second respondent contended that regulation 50 was such internal remedy which the appellant had to exhaust before approaching the court. The court a quo was asked to determine the preliminary point before considering the merits. It held that regulation 50 constituted an internal remedy and dismissed the application with costs. The court granted the appellant leave to appeal to this court.

The issue on appeal was whether regulation 50 constituted an internal remedy which the appellant had to exhaust before approaching a court on review. The SCA found that regulation 50 fell short of the legal requirements of an administrative internal remedy envisaged in s 7(2) of PAJA in that an administrative decision was not capable of being appealed in terms of the regulations, ie to confirm, substitute or vary the decision. Regulation 50 was instead a non-binding mere dispute resolution mechanism.

The SCA accordingly held that regulation 50 did not constitute an internal remedy and that the court a quo erred in upholding the preliminary point raised by the Municipality and second respondent.

The SCA found that s 62 of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act) would have been an internal remedy envisaged in s 7(2) of PAJA, however that it was limited to cases where rights had not yet accrued. Section 62 of the Systems Act was not applicable in this appeal as the Municipality and second respondent had concluded a Service Level Agreement in respect of which rights had accrued. The court found that the appellant, as an unsuccessful tender bidder, could approach the court on review.

The SCA accordingly upheld the appeal and replaced the order of the court a quo with an order dismissing the preliminary point with costs against the Municipality and second respondent jointly and severally. It remitted the matter to the court a quo for the determination of the merits of the case.

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