



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Minister of Trade and Industry v Sundays River Citrus Company (Pty) Ltd (798/2018) [2019] ZASCA 184 (03 December 2019)

From: The Registrar, Supreme Court of Appeal

Date: 03 December 2019

Status: Immediate

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

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against a decision of Jaji J sitting in the Eastern Cape Division of the High Court, Port Elizabeth. The appeal was dismissed with costs.

The matter concerned a grant payable by the Department of Trade and Industry (the DTI) to Sundays River Citrus Company (Pty) Ltd (the respondent) in terms of a government scheme, namely, the Manufacturing Competitiveness Enhancement Programme (MCEP), aimed at promoting enterprise competitiveness and incentivising job creation and retention.

The DTI introduced the MCEP seven years ago and offers a range of grants to qualifying business who must apply for the same. Such applications are invariably approved by the DTI if the prescribed criteria have been met, after which the business may submit a claim for payment of the grant in accordance with the MCEP's Guidelines. These Guidelines also prescribe the formula for determining the amount of the grant, which represents the value that a manufacturer adds to a product in the course of its manufacturing process and is calculated as a defined percentage of the 'Manufacturing Value Added' over a two-year period. The respondent applied to become a beneficiary of the scheme and its application was approved.

On 28 March 2013 the respondent submitted a claim to the DTI for payment of its grant. After an inordinate delay the respondent was informed that the sum of its grant was determined to be R1 820 740. This was far below what the respondent had considered to be due to it, but negotiations aimed at resolving the dispute proved futile, the DTI maintaining the view that its calculations were consonant with the MCEP Guidelines.

The respondents then challenged the lawfulness of the administrative action under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) during November 2016, seeking an order reviewing and setting aside the DTI's calculation decision; that the DTI be ordered to recalculate the respondent's

grant by utilising either 'the pool account method' or 'the annual financial statement method' in the alternative; that the DTI pay the respondent the sum of the grant arrived at by utilising such calculation; and costs. The court below granted an order in substantially the same terms as that sought in the notice of motion. Thus, upon the successful review of the administrative action, Jaji J directed the Minister of Trade and Industry (the appellant) to recalculate the grant payable to the respondent by utilising the pool account method. The appellant challenged this order on appeal to the SCA, arguing that the high court had in essence granted a substitution order, in terms of s 8(1)(c)(ii)(aa) of PAJA, in circumstances where the respondent had not made out a case therefor.

The SCA considered the authorities on the circumstances in which a court may substitute its own decision for the decision of the administrator but concluded that the court below had not made a substitution order in terms of s 8(1)(c)(ii)(aa) of PAJA. Instead, Jaji J had reviewed and set aside the administrative action and proceeded to direct the administrator to act in a particular way. This is one of the just and equitable orders provided in s 8 of PAJA. The question, therefore, was whether the court below had strayed beyond the parameters of s 8(1)(a)(ii) in directing the appellant to recalculate the grant payable to the respondent by utilising the pool account method.

The SCA found that it would have been a futile exercise for the court below to remit the matter without simultaneously issuing appropriate directions, as it was statutorily empowered to do under PAJA, particularly in the light of the factual matrix before it and the diametrically opposed positions that were adopted by the parties in dispute. Had it not done so the dispute between the parties would inevitably have remain unresolved, which would potentially result in further litigation and the waste of human and financial resources.

The SCA held that the invocation of s 8(1)(a)(ii) of PAJA by the court below was appropriate in the circumstances. The appeal was accordingly dismissed with costs.
