



CONSTITUTIONAL COURT OF SOUTH AFRICA

MEC for Education: KwaZulu-Natal and Others v Pillay

Case CCT 51/06

Medium Neutral Citation: [2007] ZACC 21

Decided on: 5 October 2007

MEDIA SUMMARY

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 20 and 21 February the Constitutional Court heard an appeal from the KwaZulu-Natal High Court concerning the right of a learner to wear a nose stud to school. In 2004 Sunali Pillay returned to Durban Girls' High School from the spring holiday with a small nose stud. After a period of correspondence between the school and Sunali Pillay's mother, Ms Pillay, the school decided that Sunali Pillay should not be allowed to wear the stud. Ms Pillay took the school and the KwaZulu-Natal MEC for Education to the Equality Court alleging that they had unfairly discriminated against Sunali Pillay and had violated her religious and cultural rights.

The Equality Court found that the school had not unfairly discriminated against Sunali Pillay. On appeal, the High Court overturned the decision, finding that the school had discriminated against Sunali Pillay and that the discrimination was unfair. The High Court declared the decision prohibiting the wearing of a nose stud, in school, by Hindu/Indian learners to be null and void. Both the school and the Department appealed directly to this Court. After the appeal was lodged, Sunali Pillay completed her matric and left the school.

Chief Justice Langa wrote the majority judgment, concurred in by Moseneke DCJ, Madala J, Mokgoro J, Navsa AJ, Ngcobo J, Nkabinde J, Sachs J, Skweyiya J and Van der Westhuizen J, which dismissed the appeal. He found that it was in the interests of justice for the Court to consider the matter because of the impact the decision would have on schools across the country.

He held that the rule prohibiting the wearing of jewellery had the potential for indirect discrimination because it allowed certain groups of learners to express their religious and cultural identity freely, while denying that right to others. The evidence before the Court showed that the wearing of a nose stud was a voluntary practice that formed part of Sunali Pillay's South Indian Tamil Hindu culture, which itself was inseparably intertwined with Hindu religion. He emphasised that both obligatory and voluntary practices qualified for

protection under the Equality Act. The school had therefore interfered with Sunali Pillay's religion and culture. As that burden was not imposed on others, the school's interference amounted to discrimination against Sunali Pillay. What was relevant was not whether the practice was characterised as religious or cultural, but the importance it held for the individual in question. Nor was it sufficient to state that Sunali Pillay could attend another school. Our Constitution requires the community to affirm and reasonably accommodate difference, not merely to tolerate it as a last resort.

Langa CJ observed that the school had taken meaningful steps to accommodate diversity in its community, and that uniforms and school rules served an important purpose in education. However, this case was not about uniforms in general, but about a specific exemption to a uniform. There was no evidence that permitting this particular exemption would imperil uniformity or school discipline in general. The fact that granting an exemption to Sunali Pillay might encourage more learners to express their religion or culture was to be celebrated, not feared.

Accordingly, the Chief Justice concluded that the school's discrimination against Sunali Pillay was unfair. He granted an order declaring that the refusal by the school to grant her an exemption from the Code unfairly discriminated against her. In addition, he ordered that the school, in consultation with learners, parents and staff, amend the Code to provide for a procedure to reasonably accommodate religious and cultural practices. The Department was ordered to pay Ms Pillay's costs, while the other parties had to bear their own costs.

O'Regan J wrote a separate judgment in which she dissented in part from the order made by the Court. She agreed with the majority that the Code was unfairly discriminatory because it did not contain a clear exemption procedure to ensure that the uniform rules of the Code did not result in unfair discrimination. She therefore concurred in the order made by the Court which requires the school to amend the Code on this basis. She concluded that had Ms Sunali Pillay not left the school it would have been appropriate for the matter to be referred back to it for a proper exemption procedure to be followed. As Ms Sunali Pillay had left the school, such an order was no longer appropriate. O'Regan J considered in some detail the relationship between religion and culture in our constitutional scheme and emphasised that our Constitution required public educational institutions to foster environments in which learners from different cultural and religious backgrounds would feel that they are equally respected and valued.