



CONSTITUTIONAL COURT OF SOUTH AFRICA

AllPay Consolidated Investments Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No 2)

CCT 48/13

Date of hearing: 11 February 2014

Date of judgment: 17 April 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.

Today the Constitutional Court handed down a judgment on the just and equitable remedy arising from its earlier order declaring invalid the award of a large-scale public procurement tender in *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* [2013] ZACC 42 (merits judgment).

The tender – one of the largest in South Africa’s history – was for the provision of social grants to approximately 15 million beneficiaries. The merits judgment held that the tender awarded to Cash Paymaster Services (Pty) Ltd (Cash Paymaster) by the South African Social Security Agency (SASSA) was unlawful. However, given the potential ramifications of this decision on the provision of social grants, the Court found that it would be inappropriate to decide the issue of remedy without further information and argument from the parties. The Court therefore set a return date and ordered the parties to furnish information on affidavit and file further written submissions to assist the Court in determining the appropriate remedy.

In today’s unanimous judgment, written by Froneman J, the Court declared the contract between SASSA and Cash Paymaster for the payment of social grants invalid and ordered that the tender process be re-run. In initiating and implementing a new tender process, the order emphasised that there must be no disruption to the payment of existing social grants to beneficiaries.

Although the order required that there be a new tender process, the Court recognised that the decision on the proposed final solution lies with SASSA. The Court therefore ordered that the

declaration of invalidity of the contract be suspended to allow SASSA an opportunity to re-run the tender process and take a decision on whether to award a new tender. During the period of suspension, the Court held that Cash Paymaster's contract with SASSA remains in force given its constitutional and contractual obligations to maintain a workable payment system.

To ensure effective monitoring, accountability and impartiality the Court imposed a structural interdict requiring SASSA to report back to it at each crucial stage of the new tender process and mandated that new members of the Bid Evaluation and Bid Adjudication committees be appointed.

If a new tender is awarded, the Court held that it must be for the same period as the original tender – five years. If the tender is not awarded, the declaration of invalidity of the contract will be further suspended until completion of the initial contract. The Court held that Cash Paymaster has no right to benefit from an unlawful contract, and any benefit it may derive should not be beyond public scrutiny. Therefore, to ensure appropriate public accountability, Cash Paymaster was ordered to file an audited statement of the expenses incurred, the income received and the net profit earned under the completed contract.

Finally, the Court held that AllPay's interest in the correction of the unlawful administrative action was co-extensive with the public interest and to the extent that it may be entitled to further relief, it could pursue those remedies in separate proceedings.