

SOOBRAMONEY v MINISTER OF HEALTH, KWAZULU-NATAL 1998 (1) SA 765

(CC)

SUMMARY

- The appellant was a 41-year-old diabetic suffering from ischaemic heart disease, cerebro-vascular disease and irreversible chronic renal failure.
- His life could be prolonged by means of regular renal dialysis. He sought dialysis treatment from the Addington State Hospital in Durban.
- He was not admitted to the dialysis programme of the hospital. Because the hospital did not have enough resources to provide dialysis treatment for all patients suffering from chronic renal failure its policy was to admit automatically to the renal dialysis programme those patients suffering from acute renal failure which could be treated and remedied by renal dialysis. Patients suffering from irreversible chronic renal failure were not admitted automatically to the dialysis programme but according to a set of guidelines which made the primary requirement for admission a patient's eligibility for a kidney transplant. A patient who was eligible for a transplant would be provided with dialysis treatment until an organ donor was found and a kidney transplant had been completed.
- According to the guidelines, patients were not eligible for kidney transplants unless free of significant vascular or cardiac disease. Since the appellant suffered from ischaemic heart disease and cerebro-vascular disease he was not eligible for a kidney transplant.
- In July 1997 the appellant, relying on ss 27(3) and 11 of the Constitution of the Republic of South Africa Act 108 of 1996, made an urgent application to a Local Division of the High Court for an order directing the Addington Hospital to provide him with ongoing dialysis treatment and interdicting the respondent from refusing him admission to the renal unit of the hospital.
- The application was dismissed.
- The appellant appealed to the Constitutional Court.
- *Held* (per Chaskalson P, Langa DP, Ackermann J, Didcott J, Goldstone J, Kriegler J, Mokgoro J, O'Regan J, and Sachs J concurring), that the obligations imposed on the State by ss 26 and 27 of the Constitution dealing with the right of access to housing, health care, food, water and

social security were dependent upon the resources available for such purposes, and the corresponding rights themselves were limited by reason of the lack of resources.

- Given this lack of resources and the significant demands made on them by high levels of unemployment, inadequate social security and a widespread lack of access to clean water or to adequate health services, an unqualified obligation to meet these needs would not at present be capable of being fulfilled: it was within this context which s 27(3) of the Constitution had to be construed.
- *Held*, further, that the words 'emergency medical treatment' in s 27(3) ('no one may be refused emergency medical treatment') might possibly be open to a broad construction which would include ongoing treatment of chronic illnesses for the purpose of prolonging life. But this was not their ordinary meaning and, if this had been the purpose which s 27(3) was intended to serve, one would have expected that to have been expressed in positive and specific terms.
- *Held*, further, as to the argument that s 27(3) should be construed consistently with the right to life entrenched in s 11 of the Constitution and that everyone requiring life-saving treatment who was unable to pay for such treatment herself or himself was entitled to have the treatment provided at a State hospital without charge, that such a construction of s 27(3) would make it substantially more difficult for the State to fulfil its primary obligations under s 27(1) and (2) to provide health care services to 'everyone' within its available resources. It would also have the consequence of prioritising the treatment of terminal illnesses over other forms of medical care and would reduce the resources available to the State for purposes such as preventative health care and medical treatment for persons suffering from illnesses or bodily infirmities which are not life threatening. Much clearer language than that used in s 27(3) would be required to justify such a conclusion.
- *Held*, further, that the purpose of s 27(3) seemed to be to ensure that treatment was given in an emergency, and was not frustrated by reason of bureaucratic requirements or other formalities. A person who suffered a sudden catastrophe which called for immediate medical attention should not be refused ambulance or other emergency services which were available and should not be turned away from a hospital which was able to provide the necessary treatment. What the subsection required was that remedial treatment that was necessary and available be given immediately to avert that harm.
- *Held*, further, that, given that the appellant suffered from chronic renal failure and that to be kept alive by dialysis he would require such treatment two to three times a week, his condition was not an emergency calling for immediate remedial treatment. It was an

ongoing state of affairs resulting from an incurable deterioration of the applicant's renal function. Section 27(3) therefore did not apply to this situation.

- *Held*, further, that the appellant's demand to receive dialysis treatment at a State hospital had to be determined in accordance with the provisions of s 27(1) and (2) (entitling everyone to have access to health care services provided by the State 'within its available resources') and not s 27(3).
- *Held*, further, that in a context of budget constraints and cutbacks in hospital services in KwaZulu-Natal there were many more patients suffering from chronic renal failure than there were dialysis machines to treat such patients. Guidelines were therefore established to assist medical personnel to make the agonising choices which had to be made in deciding who should receive treatment and who not. These guidelines were applied in the present case. By using the available dialysis machines in accordance with the guidelines more patients were benefited than would be the case if they were used to keep alive persons with chronic renal failure. The outcome of the treatment was also likely to be more beneficial because it was directed to curing patients, and not simply to maintaining them in a chronically ill condition.
- *Held*, further, that the appellant's case had to be seen in the context of the needs which the health services had to meet, for if treatment had to be provided to the appellant it would also have to be provided to all other persons similarly placed. If all the persons in South Africa who suffer from chronic renal failure were to be provided with dialysis treatment the cost of doing so would make substantial inroads into the health budget.
- *Held*, further, that the provincial administration which was responsible for health services in KwaZulu-Natal had to make decisions about the funding that should be made available for health care and how such funds should be spent. These choices involved difficult decisions to be taken at the political level in fixing the health budget, and at the functional level in deciding upon the priorities to be met. A court would be slow to interfere with rational decisions taken in good faith by the political organs and medical authorities whose responsibility it was to deal with such matters.
- *Held*, further, that the State had a constitutional duty to comply with the obligations imposed on it by s 27 of the Constitution. It was not shown in the present case, however, that the State's failure to provide renal dialysis facilities for all persons suffering from chronic renal failure constituted a breach of those obligations.
- Appeal dismissed.