

SOUTH AFRICA / JUDGMENT

Pitso v Electoral Commission

(1/2001) [2001] ZAEC 2; [2001] 3 All SA 607 (Elect Ct) (6 April 2001)

[2001] ZAEC 2

COURT
Electoral Court

BEFORE
Smalberger, Tshabalala, Van der Walt, Pillay, Masipa

CASE / FILE NUMBER
1/2001

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Case

number: 1/2001

IN THE

ELECTORAL COURT OF SOUTH AFRICA

In the

matter between:

P M

PITSO

.....APPELLANT

and

THE

ELECTORAL

COMMISSION.....

RESPONDENT

CORAM:

SMALBERGER ADCJ, TSHABALALA JP, VAN DER WALT, PILLAY and MASIPA JJ

DATE

OF HEARING: 26 MARCH 2001

DELIVERY

DATE: 6 APRIL 2001

JUDGMENT

VAN DER WALT J:

On 5 December 2000 municipal elections were held throughout Sout Africa in accordance with the provisions of the Local Government: Municipal Electoral Act 27 of 2000("the Act").

Appellant was a candidate participating as an independent for the election as councillor in Ward 3 in the Schweizer Reneke municipal election.

Appellant was unsuccessful. Five candidates contested the election in Ward 3. The successful candidate was the candidate of the African National Congress ("the ANC"). The appellant obtained the second highest number of votes.

On 7 December 2000 the appellant lodged a formal written objection in terms of section 65 of the Act against the election result listing certain irregularities that had allegedly occurred on the day of the election at a voting station. He also alleged that there were discrepancies in the number of votes cast and the number of spoilt ballot papers. Overall the irregularities and discrepancies in the number of votes and spoilt ballot papers were alleged to be material to the declared result of the election in Ward 3.

The irregularities complained of by appellant were the following:

- that ANC members on voting day in the immediate vicinity of the voting station canvassed for votes - conduct in contravention of section 75(b) of the Act;
- that ANC posters were displayed on voting day outside the voting station and also within twenty metres of the voting station - conduct in contravention of section 72(2) of the Act.

All these alleged irregularities would have constituted contraventions of the Electoral Code of Conduct or of Part 1 of Chapter 7 of the Act and could have been dealt with in terms of section 78 of the Act.

A further irregularity alleged was that a sealed of a ballot box that had been officially sealed was subsequently found broken and the box was open.

Furthermore, there were discrepancies in the totals of the ballots cast and the number of spoilt ballot papers despite three recounts. A number of the spoilt ballot papers had not been stamped on the back with the official stamp and were therefore rejected. The appellant submits that this was due to the mistake of the officials at the voting station.

The alleged irregular conduct of ANC members had been brought to the attention of the presiding officer at the voting station who in due course took steps to remedy the situation. No further complaints were made by the appellant in terms of section 78 of the Act.

The discrepancy in the number of votes cast and spoilt ballot papers and the open ballot box was apparently not made the subject of a written objection to the counting officer in terms of section 59 of the Act.

The objection in terms of section 65 submitted by the appellant on 7 December 2000 was duly considered by the Electoral Commission and rejected on 11 December 2000. Leave to appeal was sought and granted by the Chairperson of the Electoral Court.

From the submission by the Commission to this court it became apparent for the first time that there were two voting stations in Ward 3 and that the appellant's complaints related only to occurrences at one of these voting stations.

The votes in favour of the successful candidate in Ward 3 totalled 797. The appellant received 623 votes. There were 63 spoilt ballot papers. These figures appear from the certified voting results, Even if all the spoilt ballots were to be allocated to the appellant he would still have 111 votes less than the successful ANC candidate.

By only referring in his submissions to the results of one of the two voting stations appellant did not place the full facts before the Commission or this court. This flawed picture made it possible for the appellant to submit that Ms objection could be material to the result of the objection which, in fact, it was not.

Whilst it is apparent that the appellant cannot succeed in his appeal, it may be useful and necessary to indicate our views on certain aspects of the proceedings.

In its letter of 11 December 2000 the Commission informed the appellant that it had "considered your objection in terms of the provisions of section 65 of the Local Government: Municipal Electoral Act, 2000 (Act 27 of 2000). Your objection was, however, rejected."

Only when leave to appeal to this court was sought did the Commission furnish reasons for its rejection of the appellant's objection to the secretary of this court. In terms of section 65(4) of the Act:

"The Commission must -

- (a) consider the objection and decide it...
- (b) immediately notify the objector and any other parties involved in the objection, of the decision."

That decision may be taken on appeal to this court in terms of section 65(5) of the Act.

We are of the view that the Commission's decision must also incorporate its reasons, however brief, for that decision.

Justification for our view is to be found in section 33(1) of the Constitution.

"Everyone has the right to administrative action that is lawful, reasonable and procedurally fair."

The fairness of the decision of the Commission depends on the reasoning on which its decision is based.

In any event an appeal, or application for leave to appeal, can only be dealt with in a meaningful manner if reasons have been given for the disputed decision.

In his objection the appellant referred to certain alleged irregularities as aspects that were material to the declared result of the election.

As stated above all these irregularities could amount to contraventions of Part 1 of Chapter 7 of the Act, or the Electoral Code of Conduct. However, it is difficult to relate the illegal display of a poster as being material to the declared result of an election.

In my view objections material to the declared results of an election in terms of section 65 of the Act will in the overwhelming majority of cases be concerned with the irregularities in the voting procedure, the ballot papers, the number of votes cast and the number of spoilt ballot papers and the reasons why those ballot papers were rejected. In other words, any irregularity which would affect the tally of votes to the extent that an unsuccessful candidate may gain sufficient votes to reverse the election result

Should an objector rely on an irregularity such as the display of a poster or an result, unlawful interference with a voter's choice of candidate, then a sufficient number of affidavits of voters concerned would probably have to be filed in support of the objection to show that the declared result of the election might have been materially affected.

In the premises the allegations made in the appellant's objection have not been shown to have been material to the declared result of the election and no ground exists for interfering with the Commission's decision. Accordingly the appeal is dismissed. No order as to costs is made.

PJ van DER WALT

JUDGE OF THE HIGH COURT

SMALBERGER ADCJ)Concurred

TSHABALALA JP)

PILLAY J)

MASIPA J)

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