

# IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**August and another v Electoral Commission and others**

**CCT 8/99**

**Decided on 1 April 1999**

---

## 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.*

*Any adult South African citizen in possession of an identity document is entitled to apply for registration as a voter on the national common voters roll and has the right to vote in elections for any legislative body established in terms of the Constitution. It is unconstitutional, in the absence of any disqualifying legislative provision, to preclude prisoners from registering as voters as well as voting in the general elections.*

This case involved the voting rights of awaiting trial and sentenced prisoners. The Constitutional Court upheld the appeal against a decision of the Transvaal High Court which held that the Independent Electoral Commission had no obligation to facilitate the registration and voting of the said prisoners. The Constitutional Court further dismissed the notion of the High Court that prisoners had no right to vote because they were considered to be the architects of their own misfortune.

Section 1(d) of the Constitution provides that one of the values on which the one, sovereign and democratic state of the Republic of South Africa is founded, is the universal adult suffrage and a national common voters roll. In s 19(3), the Constitution further guarantees the right of every adult citizen to vote in elections for any legislative body established in terms of the constitution.

The main question before the Constitutional Court was whether prisoners' constitutional right to vote will be infringed if no appropriate arrangements are made to enable them to register and vote. The Court pointed out that the right to vote by its very nature imposes positive obligations upon the legislature and the executive. This is the reason why the Constitution provides for the establishment of the Independent Electoral Commission as an independent and impartial body to manage the elections and ensure that they are free and fair. The court emphasised the universal adult suffrage on a common voters roll as one of the foundational values of our entire constitutional order. The Court went further to say that the universality of the franchise is important not only for the nationhood and democracy, but that the vote of each and every citizen is a badge of dignity and of personhood. The Court held that the right to vote must be interpreted to enfranchise rather than disenfranchise eligible voters.

In relation to the proper interpretation of the phrase 'ordinarily resident' in so far as it relates to prisoners, the court held that this phrase is not a term of art. It is well

established in our law that the word 'residence' must be interpreted in its context. Its meaning depend on the context in which it is used and the purpose it is intended to serve. The phrase must therefore be interpreted in a way which facilitates both the constitutional and legislative objectives.

It was clear that neither the Constitution nor the Electoral Act 73 of 1998 contains a provision that disqualifies or limit the rights of awaiting trial and sentenced prisoners. In view of the fact that Parliament, being the only organ with the power to disenfranchise prisoners of their right to vote in terms of the law of general application, had not sought to limit this right, neither the Independent Electoral Commission nor the court has the power to assume this role. In the absence of a disqualifying legislative provision, it was not possible for respondents to seek to justify the limitation of prisoners' rights in terms of s 36 of the Constitution as there was no law of general application upon which they could rely on. As a result, the court held that prisoners retained their constitutional right to vote and that the Independent Electoral Commission was obliged to make all the necessary and reasonable arrangements to enable them to vote.

The judgment of the Court was delivered by Sachs J and was concurred in by the other members of the Court.