

CONSEQUENCES OF Failing to adopt a budget BY 30 JUNE

Political disagreements in a municipal council sometimes lead to stalemates on important matters such as the adoption of a municipal budget. Failure to adopt a budget by 30 June triggers the question: must the provincial government intervene, and, if so, how? This matter was the subject of a recent ruling of the Western Cape High Court. In this case, the High Court for the first time addressed the mandatory provisions of section 139(4) of the Constitution.

Facts

The council of the Overberg District Municipality comprises 20 councillors, 11 of whom are joined in a ruling coalition, while the remaining nine belong to the opposition. Political squabbles in the Overberg District Municipality began with a resolution on 10 March 2010 to remove the speaker from office. Later, on 29 March, a meeting was called by the municipal manager for the purposes of electing a speaker as required under section 29(2) of the Municipal Structures Act. The exact date when the new speaker was elected was disputed in court.

When the council next met on 13 April 2010, the new speaker had, in fact, resigned. A speaker was then elected from among the councillors, purely for the purpose of chairing the meeting. At the same meeting, the municipality's annual draft budget was tabled and approved so that it could be published for comments. Although the Overberg District Municipal council was obliged to approve a budget before 30 June 2010, no further council meeting was held until July.

On 26 May, the coalition's 11 councillors requested the municipal manager to convene an urgent special council

meeting, but to no avail. The municipal manager's view was that only a speaker could convene such a meeting, and that office was vacant. Similar requests by the 11 councillors of the ruling coalition were made to the municipal manager on 11 June and 25 June, but they yielded no result. On 30 June 2010, the coalition councillors allegedly wrote to the Western Cape provincial government in an attempt to compel the municipal manager of the Overberg District Municipality to convene a council meeting, but without success.

On 9 July, the 11 councillors gave an ultimatum to the effect that if no council meeting was convened, they would meet regardless of whether a council meeting had been convened by the municipal manager or not. On that same day, a meeting was held, presided over by another official of the municipality. A speaker, executive mayor and deputy executive mayor were elected. The meeting purported to approve the 2010/11 budget and resolved to place the municipal manager on compulsory leave.

However, on 14 July 2010, the MEC for Local Government gave notice to the councillors of his intention to request the Western Cape Provincial Executive to dissolve the Overberg District Municipal Council under section 139(4) of the Constitution for failure to approve an annual budget before 1 July 2010. It is this decision that the Overberg municipality wanted the Court to set aside.

Arguments

The Premier of the Western Cape argued that once the council had failed to pass the budget by 30 June, in terms of section 139(4) of the Constitution, read with sections 136–140 of the Municipal Finance Management Act, there was no alternative but to dissolve the council, approve a temporary budget and appoint an interim administrator. The approval of the budget by the Overberg District Municipality on 9 July 2010, the Premier argued, had no legal basis because it took place after

the constitutional deadline of 30 June 2010. Moreover, the meeting had not been properly convened and the resolution purporting to approve the budget was invalid for that purpose.

The Overberg District Municipality argued that the Province was wrong in arguing that it had no choice but to dissolve the council. It argued that section 139(4) of the Constitution required the provincial executive to take 'any appropriate steps' to ensure that the budget was approved, and the decision to dissolve the council had been inappropriate. The municipality also argued that the council had lawfully approved the budget at the special meeting of 9 July, and therefore the circumstances that demanded intervention in terms of section 139(4) of the Constitution were no longer there.

Ruling

The Court distinguished section 139(1) of the Constitution, which provides that a provincial government may intervene under certain circumstances, from section 139(4), which provides for a mandatory intervention.

The Court indicated that the issue should not be resolved purely on the basis of the literal meaning of the words in a statute. The Court reasoned that section 139 of the Constitution could not be read in isolation, but had to be viewed against the background of the constitutional framework of which it formed part. Even when a province was obliged to intervene, it had to exercise its discretion to take such steps as were appropriate to achieve the end sought. The purpose was 'to ensure that the budget or revenue-raising measures are approved'. Intervention under section 139(4) of the Constitution had to be suitable to resolve the problem of the council's failure to approve a budget or revenue-raising measures.

According to the Court, the decision by Western Cape Provincial Executive to dissolve the Overberg District Municipal Council was inconsistent with the constitutional obligation of section 41 of the Constitution, which deals with cooperative governance. Had the Western Cape Provincial Executive taken into the account the reason for Overberg's failure to approve the budget, namely the absence of the speaker and the municipal

key points

- Disagreements among councillors of Overberg District Municipality led to a stalemate on the adoption of a municipal budget by 30 June 2010.
- The province argued that it was legally forced to dissolve the council, approve a temporary budget and appoint an interim administrator.
- The dissolution was challenged by the councillors and the High Court declared the intervention invalid.

manager's uncooperative behaviour, it would not have rushed to take the decision it took. The Court therefore declared the intervention invalid.

The High Court held that the purported decision made by the 11 councillors to approve the draft budget was insufficient to make such a decision binding on the council. The Court declined, however, to invalidate the purported approval of the temporary budget by the Western Cape Province, reasoning that this would further delay the approval of the budget. The Western Cape Province obtained leave to appeal to the Supreme Court of Appeal.

Comment

This case illustrates the consequences of infighting among elected leaders in municipalities, and its effect on the integrity of local governments. Internal fights among municipal political leaders often result in the officials having to take sides in the feud, resulting in municipal councils (as forums for deliberative democracy by local governments) being rendered inoperative.

The case also clarifies the procedure for dissolving a municipal council when it fails to approve the budget and adopt revenue-raising measures. The Court explained that section 139(4) of the Constitution should not be interpreted restrictively, as if the dissolution of the council were the only option, but rather liberally and broadly, within the context of protecting the integrity and autonomy of local government.



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