

Respecting electoral rules a ‘must’ for political parties

Electoral Commission of the Republic of South Africa v Inkatha Freedom Party (CCT 33/11) [2011] ZACC 16 (10 May 2011)

The facts

Following the publishing of the date of the 2011 local government elections and the elections timetable, the Inkatha Freedom Party (IFP) prepared party lists for presentation to the various municipalities it intended to contest in accordance with the electoral timetable. However, documents intended for Umzumbe Local Municipality in KwaZulu-Natal were wrongly dispatched to Gauteng. The mistake was discovered a day before the deadline set by the Electoral Commission, and urgent arrangements to rectify it in time failed. The commission refused a request by the IFP to receive the documents in Durban instead of Umzumbe.

The IFP then approached the Electoral Court, which set aside the commission’s decision and ordered that the IFP be allowed to contest elections in Umzumbe. The commission in turn made a direct application to the Constitutional Court (CC) to appeal against the decision of the Electoral Court. The commission argued that the Electoral Court had not given it a chance to be heard and had gone against a past decision of the CC on a similar issue in *African Christian Democratic Party v Electoral Commission and Others* (ACDP) [2006] ZACC 1. The IFP, for its part, relied on the decision of the Electoral Court to support its case.

Decision

In the ACDP case, the CC had held that no central legislative purpose was served by the requirement that political parties deposit required payments in a precise place. The IFP sought to apply that argument to the current case. The

court rejected this and clarified that the ACDP judgment addressed the commission’s centralised system of payment, which was different from the submission of party lists to the commission’s local office. The CC noted that unlike payment requirements, the submission of documents locally respected the local nature of the democratic process in the context of municipal elections and also carried a manifest legislative purpose, which was to promote the efficient processing and verification of election documents to ensure the fairness of an election. The Court held:

Voters’ perception that elections have been undertaken in a free and fair manner requires that democracy be seen to be done at the local level. The submission requirements ... provide voters access to the democratic process not just on the day that they visit the ballot box, but long before, so that interested voters may actually go to the local Commission offices and confirm, for themselves, that the documents relating to the parties and candidates contesting their local elections have been duly submitted.

Accordingly, the Court found that the submission of documentation at a place other than Umzumbe for the local government elections did not constitute compliance with provisions of the Municipal Electoral Act. The decision of the Electoral Court to set aside the commission’s findings was itself set aside, and the IFP was not allowed to contest elections in the Umzumbe Local Municipality.



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