

THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Minister of Education for the Western Cape v Beauvallon Secondary School
(865/2013) [2014] ZASCA 218 (9 December 2014)

The Supreme Court of Appeal handed down judgment today in an appeal from the Western Cape High Court, Cape Town. The first appellant, the provincial Minister for Education (the Minister), had taken a decision – in the implementation of national education policy – to close a number of schools in the province, acting under s 33 of the South African Schools Act 84 of 1996 (the Act). Initially, eighteen of the affected schools and their respective school governing bodies launched an application seeking, inter alia, an order reviewing and setting aside the Minister’s decision. The South African Democratic Teachers Union (SADTU), a trade union representing the interests of certain teachers, also joined the fray as the then thirty seventh applicant.

The applicants alleged inter alia that the decision was procedurally unfair, in that the Minister had not properly informed each school of the full – or even sufficient – reasons for its impending closure, and the schools were thus not able to make meaningful representations thereon as required by the Act. An attack on the constitutionality of s 33 of the Act accompanied these claims.

The majority of the high court held that the decisions to close each of the seventeen applicant schools fell to be set aside for failure to comply with the requirements of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). The court also unanimously rejected the attack on the constitutionality of s 33 of the Act. The high court granted the Minister and his department leave to appeal the review of the Minister's decision, while this court granted the respondents leave to conditionally cross-appeal the order on the constitutionality point. However, the debate on the latter issue fell away during the course of the hearing before this court.

This court, in addressing the question of whether the Minister's decisions fell to be reviewed as administrative action under PAJA, noted that the implementation of policy is generally regarded as being administrative in nature. In any event however, s 33(1) and (2) of the Act adopts a 'notice and comment' procedure that echoes that contained in s 4(3) of PAJA. For this reason, the court found it unnecessary to pronounce on the exact nature of the power exercised by the Minister in closing the affected schools; rather, the matter is reviewable under the principle of legality in the sense that any non-compliance with the procedure prescribed in s 33 of the Act renders the decisions liable to be set aside.

Turning to the reasons supplied by the Minister to the schools for their intended closure, this court noted that the prevailing test for fairness, while dependant on the particular circumstances of the matter before the court, is whether the affected party was 'informed of the gist of the case which he has to answer'. As long as the gist of his reasons was conveyed, the Minister was thus not obliged to spell out in great detail why the particular schools were being considered for closure. This does not, however, include an explanation for the national education policies on which such decisions were based, but rather the application thereof to the individual affected schools.

On an analysis of the reasons provided by the Minister for the decision to close the affected schools, this court held that, while terse, in most instances they were sufficient to communicate the 'gist of the case' to be answered. In relation to the decision to close those schools, the conclusion of the high court that there was a failure to meet the requirements of s 33(2) of the Act which justified it interfering with the ultimate decision is unsustainable.

However, with regard to Beauvallon Secondary School, the final reasons provided by the Minister for its closure differed from those initially given to the school, on which basis it

made its representations, and appeared to have been forthcoming from the department itself rather than having emerged during the consultation process. This court held that, as the final reasons for closure differed materially from those initially provided, and thus the gist of the case to be met was not laid out, the procedure followed in regard to this particular school was fatally flawed for failure to comply with the provisions of the Act. The Minister's final decision in respect of this school thus offends the principle of legality and the high court correctly set it aside. The appeal in regard to Beauvallon must accordingly fail.

In the result, save for the instance of Beauvallon, the high court's decision to review and set aside the Minister's decision to close the remaining schools cannot stand and the appeal succeeds.