



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 20 November 2018
STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

***CTP Limited & others v The Director-General Department of Basic Education & others
(447/2018) [2018] ZASCA
(20 November 2018).***

Today the Supreme Court of Appeal upheld an appeal against the decision of the Gauteng Division of the High Court (Pretoria), in which it was held that the decision of the Director – General of the Department of Basic Education to award the tender to Lebone Consortium, to provide the printing, packaging and distribution of workbooks to public schools from 1 April 2017 to 31 March 2020 with the option of a further two year extension, is valid

On appeal, the SCA considered the method adopted by the BEC members in evaluating the bids from both Lebone Consortium and CTP JV, in particular, the implementation of the consensus seeking approach. It held that although there was no suggestion of corruption in the adoption of a consensus – seeking approach adopted by the BEC, it fell short of the standard required. The fact that the BEC (i) revisited the score card of CTP JV in regard to the ‘functionality test’; (ii) did so after it had passed estimation of all members of the BEC); (iii) not redoing the scoring in this regard for Lebone Consortium (even though all members of the BEC were comfortable with the fact that it had easily satisfied the necessary requirements); and (iv) thereafter disqualifying CTP JV on the ground that it had failed to meet the functionality requirement, was unfair. The SCA found that bidders were not treated equally and this differential treatment of bidders tainted the process and rendered the evaluation procedurally unfair.

The SCA thus found that the decision to award the tender to Lebone Consortium is in terms of s 6(2)(i) of PAJA constitutionally invalid as it violates the requirements of equity, transparency and objectivity under s 217 of the Constitution. The decision to award the tender to Lebone Consortium was therefore declared unlawful in terms of s 172 (1) (a) of the Constitution. Taking into consideration that the primary beneficiaries of the tender are learners and teachers, the SCA held that an order that will result in the disruption in the teaching and learning will not be just and equitable. It therefore suspended the declaration of the invalidity of the tender award until 31 March 2020.

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