

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Soobramoney v Minister of Health (Kwazulu-Natal)

Case CCT 32/97

Decided on 27 November 1997

Media Summary

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

The appellant is a diabetic who suffers from ischaemic heart disease and cerebro-vascular disease. His kidneys failed in 1996 and his condition has been diagnosed as irreversible. He asked to be admitted to the dialysis program of the Addington Hospital (a state hospital). He was informed that he did not qualify for admission. Addington Hospital, like many state hospitals, has a severe shortage of dialysis machines and trained nursing staff. Because of limited resources the hospital has adopted a policy of admitting only those patients who can be cured within a short period and those with chronic renal failure who are eligible for a kidney transplant. Mr Soobramoney cannot be cured in a short period and is not eligible for a transplant because of his heart condition.

Mr Soobramoney applied to the Durban High Court claiming that he had a right to receive renal dialysis treatment from the hospital in terms of s 27(3) (which provides that no-one may be refused emergency medical treatment) and s 11 (the right to life) of the 1996 Constitution. The application was dismissed.

On appeal the Constitutional Court held that the right not to be refused emergency medical treatment meant that a person who suffers a sudden catastrophe which calls for immediate medical attention should not be denied ambulance or other emergency services which are available and should not be turned away from a hospital which is able to provide the necessary treatment. Mr Soobramoney suffers from chronic renal failure and will require dialysis treatment two to three times a week to keep him alive. The Court decided that this was not an emergency which called for immediate remedial treatment.

The Court held that the right could not mean that the treatment of terminal illnesses had to be prioritised over other forms of medical care such as preventative health care. It also held that the right not to be refused emergency medical treatment was independent from the right to life and had to be interpreted in the context of the availability of health services generally.

The Court went on to consider whether Mr Soobramoney ought to receive dialysis treatment at a state hospital in accordance with the provisions of the Constitution which

entitle everyone to have access to health care services provided by the state (s 27). The Court noted that the state has a constitutional obligation within its available resources to provide health care, as well as sufficient food and water and social security. The Court found, however, that the Department of Health in KwaZulu-Natal does not have sufficient funds to cover the cost of services being provided to the public. Last year it overspent its budget by R152 million and it is anticipated that overspending will increase to R700 million in the current year.

The renal unit of the Addington Hospital is already under-resourced and 70 percent of people who, like Mr Soobramony, suffer from chronic renal failure have to be turned away. The 20 dialysis machines at its disposal should ideally serve only 60 patients, but already cater for 85 patients. The Court held that if treatment had to be provided to Mr Soobramoney it would also have to be provided to all others in a similar position and the resources available to Addington Hospital could not accommodate the demand. Furthermore, the cost of providing renal dialysis twice a week to a single patient is R60 000 per annum and to expand the programme to cover everyone who requires renal dialysis would make substantial inroads into the health budget and prejudice other obligations which the state has to meet.

The Court held that the responsibility for making the difficult decisions of fixing the health budget and deciding upon the priorities that needed to be met lay with political organs and the medical authorities and added that the Court would be slow to interfere with such decisions if they were rational and taken in good faith. The Court concluded that it had not been shown that the state's failure to provide renal dialysis facilities for all persons suffering from chronic renal failure constitutes a breach of its constitutional obligations.

The judgment of the Court was delivered by Chaskalson P and was concurred in by the other members of the Court. Madala J and Sachs J wrote separate concurring judgments.