

MEDIA STATEMENT – CASE HEARING IN SUPREME COURT OF APPEAL

The MEC for Roads and Public Works (EC) and Another v Intertrade Two (Pty) Ltd

Supreme Court of Appeal -43/2005

Hearing date: 23 February 2006

Judgment date: 27 March 2006

Promotion of Access to Information Act 2 of 2000 s 7(1) – whether tenderer instituting application for review in terms of uniform rule 53 against public body that had called for tenders is precluded from seeking order for production of documentation relating to the tender adjudication which allegedly falls, in part, outside the ambit of the record referred to in uniform rule 53(1)(b) – whether documentation ‘requested’ prior to the commencement of review proceedings in terms of s 7(1) of PAIA.

Media Summary of Judgment

In a judgment delivered today, the Supreme Court of Appeal has dismissed the appeal of the MEC for Roads and Public Works and the Chairman of the Tender Board of the Eastern Cape against a judgment which granted Intertrade Two (Pty) Ltd, an unsuccessful tenderer, a right to obtain information in their possession relating to the adjudication of tenders, which they had invited, of contracts to conduct mechanical and electrical repair work at provincial hospitals in the Eastern Cape.

The appeal turned on whether Intertrade, which had instituted an application in terms of uniform rule 53 for the review of the appellants’ tender process on grounds of irregular conduct, could, in the same proceedings, seek the production of documents relating to the tender process which were not necessarily covered by the rule. The appellants contended that Intertrade was barred from accessing the documents in terms of s 7(1) of the Promotion of Access to Information Act 2 of 2000 (‘PAIA’) which (a) prohibits access to a record sought for the purpose of criminal or civil proceedings; (b) requested after the commencement of such proceedings; and (c) where the production or access that record is provided for in any other law.

The SCA held that the provisions of s 7(1), which operate cumulatively, did not apply to the instant case because Intertrade had requested the documents from the appellants by way of two letters before it launched the application. Section 7(1)(b) was not, therefore, complied with. The SCA held that whilst it was debatable whether Intertrade could access all the documents by invoking the discovery procedure provided in Uniform rule 35 as contended by the appellants, it was not necessary to decide this point in the light of its finding in respect of s 7(1)(b).

The SCA emphasised the objects of PAIA – to make information held by the state accessible to the public to promote accountability. The SCA expressed its extreme displeasure at the appellants' failure to play open cards with Intertrade and their waste of public funds by raising technical legal defences whilst public hospitals remained poorly maintained and sick children died as a result thereof.