

Legality of 'land rates' imposed as 'flat rates' by municipalities before the December 2000 elections

Facts

The Eastern Gauteng Services Council sought to impose 'land rates' on owners of agricultural land falling in its jurisdiction. The Council approved budgets (including the land rates in question) for the rating years from 1 July 1997 to 30 June 1998 and 1 July 1998 to 30 June 1999. The rates were flat rates. Notification of their imposition was by two notices issued by the Council and a third issued by the MEC responsible for local government.

The affected landowners asked the Transvaal High Court to set aside the three notices, arguing that first, the imposed rates were discriminatory as they were not based on objective factors such as size and value, and second, the first two notices were of no force and effect because the Council lacked the authority to issue them. The Transvaal High Court ruled in favour of the Council. It held that since the Council was in the process of compiling a valuation roll in the affected areas, it was entitled in the interim to impose a flat rate that applied to landowners in different localities in its area of jurisdiction. The affected landowners then appealed against this judgment to the Supreme Court of Appeal (the Court).

Issues and rulings

The question before the Court in *Gerber and others v. MEC of the Gauteng Province & Eastern Gauteng Services Council* (case no. 303/2001) was whether, in imposing the rates in question, the Council and the MEC acted beyond the powers given to them in terms of the relevant legislation.

After considering the provisions of section 229 of the Constitution, the LGTA and an old Transvaal Ordinance, the Court held that the Council and the MEC did not act in accordance with the powers conferred on them by law. The land rates were not imposed as required by law as the Council, and not the MEC, issued the first two notices in terms of the Ordinance. The Council and the MEC failed to properly appreciate their functions and powers in this regard.

The Court emphasised that municipalities must adhere to the principle of legality, meaning that state institutions may act only in accordance with powers conferred on them by law.

Furthermore, after considering the Constitutional Court judgment in *Pretoria City Council v Walker* 1998 (2) SA 363 (CC) and the ordinary

key points

- Municipalities must adhere to the principle of legality, meaning that they may act only in accordance with powers conferred on them by law.
- It is tried and trusted practice to calculate property rates in relation to the size and value of the properties and the provisions of section 229 of the Constitution are not a deviation from this.

meaning of the word 'rate', the Court held that it is tried and trusted practice to calculate property rates in relation to the size or value of properties. Section 229(1)(a) of the Constitution did not suggest that municipalities could impose property rates based on some other mechanism for calculation. Thus, the land rates imposed by the Council had the effect of treating landowners unequally. The Court also held that it was a misnomer to classify the land rates in question as 'flat rates' especially if the Council argued that the rate was uniform fair and consistent in nature.

The Court ruled that all three notices issued were invalid and that the imposed rates must be set aside.

Comments

One needs to assess the importance of this judgment for municipalities after the December 2000 elections against the backdrop of the following issues, to which the Supreme Court did not give consideration:

- the Council's statutory dis-establishment and amalgamation history since the judgment handed down by Transvaal High Court;
- the general validity of provincial legislation in relation to the Constitution;
- the examination of every legal path open to municipalities seeking to impose rates or other levies on residents, within their area of jurisdiction; and
- the relevance of the provisions of the Local Authorities Rating Ordinance, 1977.

The judgment handed down was based on administrative and interpretative law principles and did not consider the specific legal principles pertaining to property rates within the local sphere of government. The importance of the judgment lies in the fact that emphasis was placed on the principle of legality that should govern each action taken by all spheres of government.

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election. Only the Electoral Court, it was argued, could make such decisions. The Court's decision outlines the procedure for challenging 'any aspect of an election that is material to the declared result'. A party must first lodge an objection with the Electoral Commission, which must consider and decide the matter within three days. An appeal may be made to the Electoral Court if the complainant is dissatisfied with the Commission's decision.

Mketsu argued that the procedure in the Municipal Electoral Act (MEA) was not mandatory and that the High Court retained its inherent jurisdiction to hear such applications.

The Court rejected this argument, holding that a proper reading of the legislation reveals that the Electoral Court has exclusive jurisdiction over all electoral disputes unless it decides to give jurisdiction to other courts. However, the High Court could not have been given the jurisdiction to deal with the current dispute as the Electoral Court only has the power to give jurisdiction to other courts to hear disputes that arise prior to the election and not those disputes that may materially affect the result.

The Court outlined the process as follows: all electoral disputes, infringements of the Code and contraventions relating to municipal elections that are not material to the result are to be dealt with by the Electoral Court or some other court that has been given jurisdiction. Where objections are lodged regarding any other aspect of an election that is material to the result, the procedures in the MEA must be followed.

Thus, the procedures in the MEA were meant to be mandatory and the High Court had no jurisdiction to hear Mketsu's complaint.

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