

ASHOK RAMA MISTRY v THE INTERIM NATIONAL MEDICAL AND DENTAL COUNCIL OF SOUTH AFRICA AND OTHERS

CCT 13/97

Explanatory Note

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

The central problem in this case is whether the powers of entry, examination, search and seizure given to inspectors by a section of the Medicines and Related Substances Control Act violate the provisions of the interim Constitution which guarantee personal privacy. This section of the Act grants to inspectors the authority to enter into and inspect *any* premise, place, vehicle, vessel or aircraft where such inspectors reasonably believe there are medicines or other substances regulated by the Act.

The chain of events which led to the present proceedings was initiated by a letter of complaint from a patient to the Interim National Medical and Dental Council of South Africa (the Council) against Dr Mistry, who has a general practice in Pinetown. In response, the Council ordered an inspection of the doctor's surgery by two of its investigating officers. Prior to conducting the search, one of the investigating officers notified an inspector of the Department of Health of the planned inspection. The investigating officers and the inspector then proceeded together to the doctor's surgery where they conducted a search in the doctor's absence and seized numerous items all of which the doctor argued should be returned.

Justice Sachs wrote the unanimous judgment of the Court. The Court found that the existence of safeguards to regulate the way in which state officials may enter the private domains of ordinary citizens is one of the features that distinguish a constitutional democracy from a police state. In reviewing South Africa's experience with regard to statutory controls over the power of the police to search and seize, Justice Sachs found the experience mixed. On the one hand South Africa has had an admirable history of strong controls over the powers of the police to search and seize. On the other, when it came to racially discriminatory laws and security legislation, generations of systematised violations of personal privacy have led to disrespect for citizens. These norms have seeped into the public administration and promoted habits and practices inconsistent with the standards of conduct now required by the Bill of Rights.

While periodic regulatory inspections are necessary to maintain professional standards and to protect the citizenry at large, the section authorising such inspections in the present case went too far. The section is so wide and unrestricted as to authorise any inspector to enter any person's private home simply on the basis that aspirins or cough mixtures are suspected of being there.

Dr Mistry also challenged the constitutionality of the inspector's search on the grounds that an investigating officer of the Medical Council told the inspector of the complaint in breach of statutory confidentiality requirements. He claimed that the search by the inspector violated his constitutional right to privacy. The Court found, however, that Dr Mistry had failed to establish a breach of such right for the following reasons: the information was volunteered by a member of

the public, the substance of the information communicated was not personal in nature but related to the doctor's professional practice, and the information was not communicated to the press or to the public but was given to another inspector charged with protecting public health.

The Court's order invalidating the section of the Medicines Act is not retrospective and will not affect searches conducted before the date of the judgment. The Court denied Dr Mistry's request for the return of the items seized on grounds that the search was conducted according to a law that had not been invalidated at the time and the doctor failed to establish alternative grounds for invalidating the search.

29 May 1998