

## **Soobramoney vs. Minister of Health, KwaZulu-Natal 1998 (1) SA 765 (CC), 1997 (12) BCLR 1696 (CC)**

Health care - right of access to health care services - right not to be refused emergency medical treatment

### **Facts**

The applicant, a 41 year old and unemployed man, was suffering from chronic renal failure resulting from diabetes. This condition was irreversible. His life could only be prolonged by an on-going dialysis treatment. He approached a state hospital for this treatment but the hospital refused him admission to its renal unit following a set policy. According to the policy, the primary requirement for this treatment was eligibility for a kidney transplant. The treatment could be administered until a donor was found and the transplant completed. Furthermore, to be eligible for a kidney transplant, a patient has to be free from other "significant" diseases. The Appellant failed to satisfy the requirements for a kidney transplant as he was suffering from other serious diseases such as heart disease. This refusal prompted the applicant to ask for a court order directing the hospital to provide him with on-going dialysis treatment, and restraining the provincial Minister of health from refusing him admission to the renal unit of the hospital.

The High Court dismissed the application. Thereupon, he appealed to the Constitutional Court, arguing that patients who suffered from terminal illnesses and required treatment to prolong their lives were entitled to be provided with such treatment by the State pursuant to section 27(3), which guarantees the right to of everyone not to be denied emergency treatment. Reliance was also placed on section 11, which guarantees the right to life.

### **The Decision**

1. According to Constitutional Court, "the right to medical treatment does not have to be inferred from the nature of the State established by the Constitution or from the right to life which it guarantees". (Para 19) This right is dealt with directly under section 27.
2. The right not to be refused emergency medical treatment under section 27(3) of the Constitution was interpreted to mean that the State is under an obligation not to deny a person remedial treatment that is necessary and available to forestall harm in the case of a sudden catastrophe or emergency. It did not extend to the provision of ongoing treatment of chronic illness for prolonging life. To hold otherwise, "it would make it substantially more difficult for the state to fulfil its primary obligations under sections 27(1) and (2) to provide health care services to 'everyone' within its available resources". (para 19).
3. The Court then considered the applicability of section 27(1)(a) read with (2) of the Constitution. This provision gives everyone the right of access to health care services, including reproduction health care. This obligation is qualified in that the State is required to take "reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right."
4. The Court found that all renal units were stretched in terms of resources. There were more people suffering from renal failure than there were dialysis machines to treat them. The Court indicated that "it would be slow to interfere with rational decisions taken in good faith by political organs and medical authorities whose responsibility it is to deal with such matters". (para 29) It took the view that the guidelines drawn up by the hospital authorities for determining patients who qualified for dialysis treatment were reasonable. It was not shown

that these guidelines had been applied irrationally or unfairly in the present case. Thus, the Court refused to order the provision of the treatment arguing that the guidelines had the advantage of allocating scarce resources rationally to ensure that a greater number of patients are cured than would be the case if the dialysis machines were used to keep alive persons with chronic renal failure.