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High Court rules in favour of Chinese South Africans

IN a landmark judgement issued in Pretoria today, 18 June 2008, the High Court ruled that South African citizens of Chinese descent, numbering less than 10 000, automatically qualify for the full benefits in terms of the country's Employment Equity and Broad-Based Black Economic Empowerment legislation.

This ruling is the culmination of an eight year struggle by the Chinese Association of South Africa (CASA) to obtain clarity from government as to whether Chinese South Africans, who were classified as "coloured" during the apartheid era, qualified for the benefits of the Employment Equity Act (EE Act) and the Broad-Based Black Economic Empowerment Act (BBBEE Act).

The anomaly first arose with the inception of the EE Act in December 1999, which defines "black people" as a generic term for "Africans, Coloureds and Indians". The same definition was subsequently used in the BBBEE Act which came into operation in April 2004.

"As Chinese South Africans we were officially classified as 'coloured' during the apartheid era and suffered under the same discriminatory laws prior to 1994. The logical inference was thus that Chinese South Africans would automatically qualify for the same benefits afforded to the "Coloured" group, post 1994," says CASA's Chairperson, Patrick Chong.

However, this was not the case and the Chinese South Africans suffered a second round of unfair discrimination by not being sure of their status under the two Acts.

"Although the Acts did not specifically exclude Chinese South Africans, the fact that they were not mentioned by name led to a lot of confusion in the marketplace," says George van Niekerk, a director of the law firm, Edward Nathan Sonnenbergs, who represented CASA.

"For example, one commercial bank would, given the historical considerations, classify Chinese South Africans as 'black' for the purposes of the Employment Equity Act and the Broad-Based Black Economic Empowerment Act whereas another commercial bank declined to do so. The net result was that Chinese South Africans were never sure of their status," says van Niekerk.

CASA has been engaging government since 2000 in order to seek clarity on the status of Chinese South Africans. Amongst other attempts, CASA made formal representations to Parliament's Labour Portfolio Committee in 2004.

In November 2004, the Minister of Labour, whilst answering questions in the National Council of Provinces, indicated that Chinese South Africans "have the right to seek clarity or legal recourse via our courts" as to whether they should be included within the ambit of the Employment Equity legislation.

"It was never CASA's intention to take the matter to the Court, but as government was unable - in the course of eight years - to provide a definitive answer as to the community's status, we had no other option," says Chong.

"In June 2006, Edward Nathan Sonnenbergs wrote to the Minister of Labour, the Minister of Trade and Industry and the Minister of Justice and Constitutional Development, demanding clarity regarding the classification status of Chinese South Africans," says van Niekerk.

This did not yield any satisfactory response and CASA had no other choice but to launch a High Court application on 20 December 2007, citing all three Ministers as respondents.

Although all three Ministers had originally filed a notice to oppose CASA's application in January 2008, the government eventually conceded the merits of the matter in April 2008. It subsequently accepted liability to pay CASA's legal costs as well.

In his ruling today (Wednesday, 18 June 2008), Justice Pretorius indicated that Chinese South Africans fell within the ambit of the definition of "black people" in both the Employment Equity Act and the Broad-Based Black Economic Empowerment Act.

Representing CASA in court was the well-known human rights lawyer, Adv George Bizos SC, assisted by Adv Alfred Cockrell.

"Justice has now been served for Chinese South Africans – one of the country's most politically marginalised communities," says van Niekerk.

"The Chinese community in South Africa would like to make use of this new found freedom to create even more jobs for the unemployed," says Chong.

"Education has always been very important to the community and there is a very strong work ethic which typifies the community.

"Despite the fact that our children can work anywhere else in the world, they prefer to remain in South Africa and contribute towards building the economy," he says.

Ends

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