



Health Department of Sao Paulo v. Municipality of Sao Paulo

Civil Appeal No. 152.887.0/1-00

Country: Brazil

Region: Americas

Year: 2007

Court: Court of Justice for the Minority and Collective Interest [Procuradoria da Justica de Interesses Difusos e Coletivos]

Health Topics: Child and adolescent health, Disabilities, Health care and health services, Poverty

Human Rights: Right to health, Right to life

Facts

A minor diagnosed with progressive muscular dystrophy was denied access to a special Municipal transportation service called the ATENDE program because he was not yet using a wheelchair. The ATENDE program was instituted to meet the needs of handicapped people who could not otherwise access common public transportation. The Health Department of Sao Paulo, on behalf of the RFN Minor, filed a Writ of Mandamus with the Court of Justice for Minority and Collective Interests. This first instance court granted the request and ordered the Municipality to provide the RFN Minor access. Dissatisfied with the decision, the Municipality appealed.

In the appeal, the Municipality first argued that two other parties should be added as co-defendants in the case, the Director of the Department of Social Assistance and Development, the government branch responsible for assisting the handicapped, and SPTrans, the agency that carried out public transportation services in the city of Sao Paulo.

Next, the Municipality requested a review of the Writ of Mandamus approved by the first instance court, requiring the Municipality to provide access to the RFN Minor. The Municipality argued that it was not able to provide access because the RFN Minor was not yet in a condition that precluded him from accessing common public transportation, since he was still able to walk. Further, if access were granted in this case, the other handicapped people who were legally registered and entitled to access would find themselves waiting for access.

The Health Department of Sao Paulo, on behalf of the RFN minor, argued that he should be granted access because he was only 7 years old, financially in-need and in poor physical health. Because RFN minor had not been able to access transportation, he had been unable to receive the medical treatment needed to survive with minimum dignity. Further, the ATENDE program was currently providing the service to his brother, diagnosed with the same condition and who was already using a wheelchair, at the same time and along the same route as the RFN minor would like to access. The vehicle used was frequently empty when it arrived to pick-up the brother. The minor's doctors and parents had confirmed that due to his weak muscular and skeletal systems, the RFN Minor was unable to hold himself secure in common public transportation and tired quickly.

Decision and Reasoning

The Court denied the request to interplead the Director of the Department of Social Assistance and Development, as well as SPTrans, because both parties were not necessary to enforce the judgment since they were ultimately controlled by the Municipality of Sao Paulo. In summary, the three entities mentioned herein are under the joint obligation to provide ATENDE services, which indicates that interpleading among them is unnecessary, but rather optional. This is true because the Author will judge the case against one as if it were against all, requiring the same complete satisfaction of such duties by each and by all.

On the merits, the Court affirmed the first instance court's approval of the Writ of Mandamus requiring the Municipality of Sao Paulo to provide special transportation service to the RFN minor because the right to life and to health were superior rights that must be protected. The Court noted that, although RFN minor was not yet using a wheelchair, his condition left him effectively unable to access common buses and therefore, his treatment. The Court further noted that the Municipality was statutorily and constitutionally obligated to guarantee the right to life, health and respect for all children and to provide assistance to handicapped people

and that the transportation requested was an essential service. Thus, By failing to provide the RFN minor a seat in the special vehicle, basing its decision on the allegation that such minor is in a physical state that permits him to walk, when it is certain that he does not have the conditions to utilize conventional municipal public transport, a right guaranteed by the Municipal Decree itself, the Public Municipal Power is adopting negligent and discriminatory behavior and failing to carry out its express constitutional and legal duties.

Decision Excerpts

providing a seat in the ATENDE vehicle is not merely a matter of transportation. It also relates to a much broader and comprehensive issue regarding the social inclusion of handicapped people, to the extent that such service provides handicapped people access to public health services they need, and without which their lives may be shortened or their health condition extremely worsened. Page 3 of English translation.

No entanto, a concessão de vaga em veículo do serviço ATENDE, não se restringe apenas a uma questão de transporte, atendendo, também, a uma necessidade muito mais abrangente e ampla, que a inclusão social do deficiente, na medida em que permite a ele o acesso a serviços públicos de saúde de que necessita, e sem os quais pode vir a ter sua vida abreviada, ou o seu quadro de saúde extremamente agravado. Page 3

The Municipality is also not in compliance to the principles of article 196 of the Federal Constitution, under which the right to health is a right granted to all and is the state's duty, guaranteeing through social and economic policies that aim to reduce the risk of diseases and other conditions the universal and equal access to acts and services for the promotion, protection and rehabilitation of its citizens. Page 7 of English translation.

Descumpre, ainda, o Município, o disposto no artigo 196 da CF, segundo o qual A saúde é direito de todos e dever do estado, garantido mediante políticas sociais e econômicas que visem à redução do risco de doenças e de outros agravos e ao acesso universal igualitário às ações e serviços para sua promoção, proteção e recuperação. Page 5

In this sense, the Second Section of the Federal Supreme Tribunal determined in the opinion published by MINISTER CELSO DE MELLO that, the subjective right to health represents the undeniable judicial prerogative guaranteed to the general public by the Constitution of the Republic (article 196). This translates as a constitutionally mandated right, and by such authority proscribes that, in a responsible manner, the Public Authority, whomever constitutes such position and has the power to implement appropriate social and economic policies must provide and guarantee its citizens, including those carrying the HIV virus, universal and equal access to pharmaceutical assistance and medical-hospital access. In addition to qualifying as a fundamental right applicable to all people, the right to health represents an undeniable constitutional consequence of the right to life. Page 10 of English translation.

Nesse sentido, decidiu a Segunda Turma do Egrégio STF, em v. acórdão relatado pelo MINISTRO CELSO DE MELLO que O direito público subjetivo à saúde representa prerrogativa jurídica indisponível assegurada à generalidade das pessoas pela própria Constituição da República (art. 196). Traduz bem jurídico constitucionalmente tutelado, por cuja integridade deve velar, de maneira responsável, o Poder Público, a quem incumbe formular - e implementar - políticas sociais e econômicas idêneas que visem a garantir, aos cidadãos, inclusive aqueles portadores do vírus HIV, o acesso universal e igualitário à assistência farmacêutica e médico-hospitalar. - O direito à saúde - além de qualificar-se como direito fundamental que assiste a todas as pessoas - representa consequência constitucional indissociável do direito à vida. Page 7