



Mistry v. Interim National Medical and Dental Council of South Africa, et al.

1998 (7) BCLR 880 (CC), [1999] 1 LRC 49

Country: South Africa

Region: Africa

Year: 1998

Court: Constitutional Court

Health Topics: Health systems and financing, Medicines

Human Rights: Right to privacy

Facts

M, a medical practitioner in private practice, had his property searched pursuant to section 28(1) of the Medicines and Related Substances Control Act, which empowered inspectors appointed by the respondent Interim National Medical and Dental Council of South Africa ("Council") to search any premise, place, vehicle, vessel or aircraft where there was a reasonable suspicion that medicines or related substances would be found. M challenged the constitutional validity of section 28 (1).

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

The Court held that section 28(1) was unconstitutional. The Court reasoned that the language of section 28(1) was so wide as to allow entry and inspection not only of health care premises, but of all premises and places including private homes, in breach of the constitutional right to privacy (section 13 of the interim Constitution). Although the Act was in the public interest of inspecting health professionals, it needed to be according to constitutionally valid criteria and procedures and such an inspection could be achieved through means less violative of section 13.

[Adapted from INTERIGHTS summary, with permission]

Decision Excerpts

"Had section 28(1) confined itself to authorising periodic inspections of the business premises of health professionals, such inspections would accordingly have entailed only the most minimal and easily justifiable invasions of privacy, if they had qualified as invasions of privacy at all. Indeed, all legitimate health professionals can only welcome such regulatory inspections. It is clear however that section 28(1) does not limit itself to authorising regulatory inspections of the premises of doctors and chemists. It expressly empowers inspectors to enter not only 'premises', but also any 'place, vehicle, vessel or aircraft'. There can be no doubt that the word 'place' is meant to have a wider meaning than 'premises', otherwise there would have been no need to put it in. The description is accordingly so broad as to authorise the inspectors to enter private homes, whether they be the dwellings of health professionals or of other persons Although it has become almost a judicial cliché to say that the object is ' . . . [to protect] people, not places', that is, to safeguard personal privacy and not to protect private property, there can be no doubt that certain spaces are normally reserved for the most private of activities. The section is so wide and unrestricted in its reach as to authorise any inspector to enter any person's home simply on the basis that aspirins or cough mixture are or are reasonably suspected of being there. What is more, the section does not require a warrant to be issued in any circumstances at all." Para. 28.

"To sum up: irrespective of legitimate expectations of privacy which may be intruded upon in the process, and without any predetermined safeguards to minimise the extent of such intrusions where the nature of the investigations makes some invasion of privacy necessary, section 28(1) gives the inspectors carte blanche to enter any place, including private dwellings, where they reasonably suspect medicines to be, and then to inspect documents which may be of the most intimate kind. The extent of the invasion of the important right to personal privacy authorised by section 28(1) is substantially disproportionate to its public purpose; the section is clearly overbroad in its reach and accordingly fails to pass the proportionality test laid down in S v

Makwanyane and Another." Para. 30.

Copyright © 2015 www.GlobalHealthRights.org