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AI 839594/ RS - Rio Grande do Sul
Interlocutory Appeal
Author: Min. Carmen Lucia
Judgment: February 28, 2011

Citation
DJe-048 DIVULG 14/03/2011 PUBIC 15/03/2011

Parties

APPELLANT(S): STATE OF RIO GRANDE DO SUL
PROSECUTOR(S): ATTORNEY GENERAL OF THE STATE OF RIO GRANDE DO SUL
APPELLEE(S): RINALDO PINZETTA
ATTORNEY(IES): OLGA MARIA GIUBEL ET AL

Decision

INTERLOCUTORY APPEAL DECISION. PROVISION OF FREE MEDICATION. JOINT RESPONSIBILITY OF THE FEDERAL ENTITIES. RIGHT TO LIFE AND TO HEALTH. STATE'S CONSTITUTIONAL DUTY. INTERLOCUTORY APPEAL DENIED. Summary 1. An interlocutory appeal was filed against the decision that denied the special appeal claimed under article 102, paragraph III, a, of the Republican Constitution. 2. The inadmissible appeal has the following objective, according to the opinion issued by the Rio Grande do Sul Justice Tribunal: "CIVIL APPEAL. PUBLIC RIGHT NOT SPECIFIED. PROVIDING SURGERY AND MEDICATION: OMEPRAZOL 20MG, RISEDRONATE 35MG, CALCIUM CARBONATE 500MG + CHOLECALCIFEROL 20UI, NITROFURANTOIN 100MG, TAMSULOSIN 0,4MG, FINASTERIDE 20MG A AMLODIPINE. FINES IMPOSED. PASSIVE STANDING. The State is responsible for its citizen's health, regardless of the disease he possesses, in accordance with article 23 of the Federal Constitution that imposes on the Union, the State, the Federal District and the Municipality the joint obligation to care for the public's health. FEES. Condemning the State to pay procedural fees is inadmissible because it was the entity that processed the nationalization process. Based on article 11 of State Law no. 8.121/85 (Fee Schedule). BY A MAJORITY VOTE, THE CLAIMANT WINS, APPEAL APPROVED IN PART" (p.10). 3. In the request for extraordinary appeal, the Appellant affirms that the Court has violated articles 196,197 and 198 of the Republican Constitution. He argues that "it is not the State's responsibility, by means of the State Health Department, to provide medications requested by the patient, since it is the responsibility of the health entities registered as CACON or UNACON to provide patients with such medication and to have the costs paid for by the National Health Fund" (p.28, citation in the original). 4. The decision under review based its ruling to deny the extraordinary appeal because of the fact that the decision was in accordance with this Supreme Court's jurisprudence. (pp. 33-36). The elements contained in the case documents were analyzed, I HEREBY DECIDE. 5. Judicial reasoning does not lie with the Appellant. 6. The opinion under appeal did not diverge from the Federal Supreme Court's jurisprudence with regards to the Public Authority's (the Union, the State, the Municipality) obligation to provide medication, at no cost, to needy people who have been diagnosed with a serious illness and where such medications guarantee conditions which allow for the right to continuity of a life with dignity and the preservation of health. In this sense: "S U M M A R Y: PATIENTS WITH SCHIZOPHRENIA PARANOIA AND CHRONIC MANIC-DEPRESSION, WITH EPISODES OF SUICIDAL ATTEMPTS - PEOPLE WHO ARE FINANCIALLY DESTITUTE - THE RIGHT TO LIFE AND TO HEALTH - IMPERATIVE NECESSITY TO PRESERVE, FOR REASONS OF ETHICAL-JUDICIAL CHARACTER, THE INTEGRITY OF THIS RIGHT IS ESSENTIAL -

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PROVISION OF FREE INDISPENSABLE MEDICATION TO THE NEEDY - STATE CONSTITUTIONAL DUTY (FEDERAL CONSTITUTION, ARTICLE 5, "HEADER", AND 196) - PRECEDENTS (FEDERAL SUPREME COURT) - ABUSE OF THE RIGHT TO APPEAL - ASSESSMENT OF FINES - APPEAL DENIED - RIGHT TO HEALTH REPRESENTS A CONSTITUTIONAL CONSEQUENCE OF THE UNALIENABLE RIGHT TO LIFE. - 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- whom is in the position and has the power to implement appropriate social and economic policies- must provide and guarantee its citizens 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. The Public Authority, whichever institution is deemed responsible for such role in the Brazilian federal system, must not show itself indifferent to such public health problems, so as to avoid the risk of adopting, even if by censurable omission, unconstitutional behavior. THE NEW INSTITUTIONALIZED LAW'S INTERPRETATION MUST NOT BECOME AN UNENFORCED CONSTITUTIONAL PROMISE. The institutionalized nature of the rule described in article 196 of the Political Letter – that applies to all political institutional entities that compose the Brazilian federalist scheme, must not become an unenforced constitutional promise. Such principle is important in order to avoid the risk that the Public Authority will defraud the people's fair expectations and illegitimately substitute compliance with this non-delegable chore by way of an irresponsible act of government infidelity that violates the very principles that govern the Fundamental Laws of this Nation. FREE DISTRIBUTION OF MEDICINES ESSENTIAL TO THE PRESERVATION OF LIFE AND/OR HEALTH TO PEOPLE IN NEED: A CONSTITUTIONAL DUTY THAT THE STATE CANNOT FAIL TO PROVIDE. Judicially recognizing the legal validity of programs that distribute free medication to people in need validates the fundamental principles of the Constitution of the Republic (article 5, header, and 196). It also represents, to its maximum extent, an action taken in reverence and in solidarity with the peoples' right to life and to health, especially of people that possess little more than a consciousness of their own humanity and of their essential dignity. Precedents of the Federal Supreme Court. FINE AND ABUSIVE USE OF THE RIGHT TO APPEAL. -The abusive use of the right to appeal, since it qualifies as a practice that is incompatible with the ethical-judicial principles of procedural loyalty - constitutes an act of malicious litigation censurable under the positive regulations, especially in the case in which the party requesting the appeal has the evident intention of delaying the judicial process. Under such scenario, the imposition of a fine is appropriate. The fine referred to in article 557, section 2 of the Code of Civil Procedure serves as a deterrent, as it aims to deter the abusive use of the right to appeal and to abstain from the inappropriate use of the recourse as a means to delay the outcome of the judicial process among conflicting interests. Precedents" (RE 393.195-AgR, Author Min. Celso de Mello, Second Section, DJ 2.2.2007, citations added). And also: AI 817.241/RS, Author Min. Joaquim Barbosa, DJ 14.10.2010; AI 553.712-AgR/RS, Author Min. Ricardo Lewandowski, First Section, DJ 5.6.2009; AI 648.971-AgR/RS, Author Min. Eros Grau, Second Section, DJ 27.9.2009; AI 559.055/RS, from my summary, DJ 2.8.2007; AI 604.949-AgR, Author Min. Eros Grau, DJ 24.11.2006; AI 486.816-AgR, Author Min. Carlos Velloso, Second Section, DJ 6.5.2005; RE 242.859-AgR, Author Min. Ilmar Galvão, First Section, DJ 17.9.1999; and RE 509.569, Author Min. Celso de Mello, DJ 14.3.2007. Additionally, the right to life must include the right to health in order for it to consecrate the principle of living with dignity. The Constitution of the Republic guarantees human beings the right to dignity (article 1, sub-paragraph III) and includes in its preamble all of the means to access the factors and conditions that permit its effectiveness. This principle constitutes, under the current constitutional system, one of the most expressive fundamentals that instruct the Democratic State of Law (Federal

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Constitution, article 1, III). The right to health, granted to all guaranteed through social and economic policies aim to reduce the risk of disease and other illnesses and to provide universal and equal access to the actions and services for the motion, protection and rehabilitation of its citizens, as proscribed in article 196 of the Constitution of the Republic, is therefore compatible with the constitutional principle of equality, a norm that guarantees the universal and equal access to all resources available that foster healthy conditions. The Constitution does not exclude any federally-created entities from the responsibility of complying with this duty, as stated in this Supreme Court's jurisprudence. Therefore, there is no need to approve the Appellant's allegations. 8. Given the above, I deny the request for interlocutory appeal (article 557, header, Code of Civil Procedure and article 21, section 1, of the Federal Supreme Court). Published. Brasília, February 28, 2011. Minister CÁRMEN

Legislation

LEG-FED CF ANO-1988

"CAPUT" ART-00023 ART-00102

00196 ART-00197 ART-00198 CF-1988 CONSTITUIÇÃO FEDERAL LEG- FED LEI-005869

ANO-1973 ART-00557 "CAPUT" PAR-00002 CPC-1973 CÓDIGO DE PROCESSO CIVIL LEG-FED RGI ANO-1980

ART-00021 PAR-00001 TRIBUNAL FEDERAL LEG-EST LEI ORDINÁRIA, RS

Observation

Legislation issued by:(GHF).

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RISTF-1980 REGIMENTO INTERNO DO SUPREMO LEI-008121 ANO-1985 ART-00011