



A Curated Conspectus of the Life, Love, Law,  
Literature and Laughter of Albie Sachs

## THE FUEL RETAILERS CASE – VIDEO TRANSCRIPT

### CHAPTER: BALANCING SOCIAL, ECONOMIC AND ENVIRONMENTAL SUSTAINABILITY

THANDI MATTHEWS

Judge Albie building on what you're talking about, with meaningful engagement, in the space of sustainable development. It's now referred to as community participation. Also, the right to say no, which we're seeing a lot when it comes to the implications of multinational corporations and the implications that they have for the environment. We spoke a bit earlier about South Africa's constitution being the first in the world to constitutionalise the right to a clean environment.

And in the case of fuel retailers, which was in 2007, very early on, the irony of that case was that it was brought by a company that wanted to build a petrol station. And you had already, in that judgment, started speaking about renewable energy. Something that has become a big topic in contemporary times. And drawing on the interdependency of how you envision socio-economic rights in that judgment you said, *'Sustainable development is achieved through integrating economic development, social development and environmental protection. It does not envisage social, economic and environmental sustainability, as proceeding along three separate tracks, each of which has to be weighed separately. The essence of sustainable development is a balanced integration of socio-economic development and environmental protection and norms.'*

I'd like to know why it is that already in 2007 you were making these linkages and for me it seems that even now, in 2023, we are still battling with how to implement sustainable development?

### CHAPTER: FIRST IN THE WORLD – ENVIRONMENT AS A CONSTITUTIONAL RIGHT

## JUSTICE ALBIE SACHS

I think our Constitution was the first in the world to include the right. I think it was then called a Safe Environment, a Healthy Environment. The word environment as a constitutional right. And as part of this idea of three generations of human rights. The civil political rights of the first generation, the late 18th century French Revolution, France, United States, chuck out King George, set up an independent state, fundamental rights, freedom rights. The second generation of rights, socio-economic rights, housing, education, health, welfare, things of that kind, coming in the 19th century, the 20th century. And now environmental rights, the right to peace, the right to development. Third generation rights. So, our struggle in a way in South Africa was timely. It fitted in with environmental rights being put on the agenda by very farsighted people, who seemed to be a little bit bonkers, you know, dreamers, tree huggers they were called. And it got into our Constitution. And I was one of those who pushed hard for it to get into the Constitution.

## CHAPTER: A MOST CURIOUS CASE

So, the theme is now there, and this was a most curious case, because the fuel retailers were all white people who had monopolised the sale of petrol throughout the country, and they objected to a black firm wanting to set up a fourth petrol station. There were three petrol stations in this town. A fourth. And they didn't object on environmental grounds. It was some purely procedural, administrative law grounds. And they [the new applicants] had got permission from the council, under a certain set of regulations. And the fuel retailers said, *'No, but there are other regulations that are required as well.'* And I looked at it and I saw that it covered the same ground, it was a purely formal distinction. And to me it seemed very incongruous, that the first people claiming rights under the environmental laws should be three owners of petrol stations. And I just felt it was unfair to the new black entrants. But Sandile Ngcobo who was very strong on redress, affirmative action and so on, he saw differently and he wrote a beautiful judgment on environment. And I was able to provide him with material from the time when Professor Weeramantry attended our Earth Summit Conference, 2002, in Johannesburg. And it's a very lovely judgment. But I added some features on my own, and stressing the importance of integrating these three elements. It's not a checklist. Okay, is it economically appropriate? And then, does it protect the environment? It's the interaction between the two that had to be emphasised. It was like a lonely dissent, but I wanted to show my support for environmental protection.

## CHAPTER: RENEWABLE ENERGY IN THE COURT

And interestingly, the Court we were putting up that was completed in 2004, the architects used renewable energy for cooling, taking the cool night air in hot summers, pushing it into cold rocks in the basement of the building. It's called the *Venturi Effect*. The warm air would draw the cold air up and you'd get natural cooling. It doesn't only save on renewable energy, it gives a much nicer feel, you're not in a refrigerated building. And that was actually, literally built into the very character of our building, that idea of the connection with the environment and it meant you could open windows, you could have balconies. And it was part and parcel of the vision of the building as a building located in a natural setting and using nature itself to calm down the heat during the day by means of this effect that I mentioned.

THANDI MATTHEWS

I think the beauty of how you describe socio-economic rights is that the interdependency of how we conceptualise rights are really at the centre.

## CHAPTER: OUR CONSTITUTION AS INSPIRATION

And I remember you had a conversation with the Notorious Ruth Bader Ginsburg once, where you spoke about our Constitution, and she mentioned that our Constitution is an inspiration for her too, because it is a forward-thinking constitution. And despite the frustration that we might have with inequality, which is becoming more and more of a problem when it comes to political stability, high youth unemployment, at the end of the day, we have basic rights that irrespective of who governs our society, and irrespective of their position on the way society ought to be, we've got these basic minimums that we can hold onto and ensure that our budget is directed towards the marginalised. So, to that extent, it just means that we have more work to do, but at least we have a foundation to start with. So, thank you, Judge.

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