



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

THE PRETORIA VS WALKER CASE – VIDEO TRANSCRIPT

CHAPTER: DIFFERENTIATED POLICIES FOR MUNICIPAL SERVICE PROVISION

JUSTICE ALBIE SACHS

So, here's this guy - I forget his name - middle class, white, I think Afrikaans speaking, in Pretoria, in one of the wealthy areas in Pretoria. He is fed up, *gatvol* is probably the word that he would have used, and that his lawyers translated into constitutional language. Why? Because he's paying much more for his water and electricity than the black people in the townships. He says, *'that's unfair discrimination, it's the same electricity, it's the same water, why should I pay more just because I'm white?*

What's worse is that if I don't pay, they're onto me, and I'm brought before the court. If they don't pay, the council says, wait.' Now, at that stage, the Pretoria council was largely white, and they had adopted that policy; they felt it would be fairer. You can use the capacity of the people receiving services in the wealthy areas to pay more to cross-subsidise the people living in the townships.

CHAPTER: THE BACKGROUND OF PROTEST IN THE 80s

The background was that there had been struggles in the townships against paying rent for the houses, paying for the electricity. They felt, *'...why should we pay the apartheid government?'*

THANDI MATTHEWS

That was in the 80s, the boycotts.

JUSTICE SACHS

In the 80s, that was the background. So, it was a background of refusal to pay.

CHAPTER: THE CONSTITUTIONALITY OF CROSS-SUBSIDISATION

We sit around the table, we're discussing it, all the Judges agree. Pius Langa is writing the judgment for the Court. Cross-subsidisation is not specifically done on the grounds of race, but we know, it's the wealthy white residents who are paying more for their water and electricity to enable more black people to get water and electricity, and some to get it free. That's eminently fair. Many of us would say more than fair, it's required by the Constitution.

But when it came to the non-prosecution, Pius said, *'no, that's going too far. We need equality before the law. And if people who happen to be black are not paying for historical reasons or whatever, they can't do that.'* He said that was unfair. And he said that although whites were a privileged group, there's nothing that says they can't become subject to discrimination in the future, and it's unfair discrimination; and that aspect of the policy appeared unconstitutional.

I disagree. I'm saying that the people in the townships have that history of resistance to paying. The council, it's not a black council, it's a white dominated council, but forward looking, wants to encourage them to pay, wants to give them more time, wants time for more counselling and involvement and the councillors from the communities to be more involved. And to give them more time to pay is not unfair. You've got to be careful about this indirect discrimination. Mr, whatever his name is, is not being targeted because he's white, he's not being singled out. If you applied that concept of indirect impact, you could say taxing the rich at higher rates than the poor is anti-white. Why? Because 90% of the rich are white. And it could apply across the board everywhere. There's indirect discrimination impact all the time because of the class differentiation in our society, associated with race.

CHAPTER: THE IRONY OF THE BLACK JUDGE AND THIS WHITE GUY, ME

So, I wrote quite a long judgment disagreeing with Pius. And here was this irony. This black Judge, who'd been in the resistance, whose brother had died in the struggle, saying that whites could potentially be a vulnerable group based on their race. And here's this white guy, me, saying that the council acted in an appropriately fair way in deferring prosecutions, given the historical circumstances. In a sense, it was historically neat that it came, not from people defending a particular category to which they belong, but based on conceptual reasoning.

So, I'm told amongst the scholars of equality, they waver between the two: the Albie position and the Pius position. I might say, I hated to disagree with Pius. He's such a fair, decent, rooted, grounded person. But he was very emphatic on that.

CHAPTER: THE TWO WHOSE VOICES I WANTED TO HEAR THE MOST

I remember from the beginning when we were on the Court, and we hadn't discussed cases before the hearing. We'd come out of the hearing, and we'd all be fired up, and the two people whose voices I wanted to hear the most were, Arthur Chaskalson - always the last one to speak; so wise, so thoughtful, so balanced and decent in his thinking – and the other was Pius Langa. And it wasn't because of his technical skill - he was good as a lawyer, good craftsman - but he had a wonderful sensibility for the country, what's fair, what's right, what's just. His intuitions, for me, were very, very striking. And he could reach out to all communities and all kinds of people. He loved the variability of human beings, you know, he would often crack little jokes about that. And now he's writing the judgment for the Court and I'm disagreeing with him on issues of race, where he's experienced so much more than I have in a negative sense. But I thought he was wrong, and I said so.

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