

THE SUPREME COURT

326 & 327/00

Keane C.J.
Denham J.
Murphy J.
Murray J.
Hardiman J.
Geoghegan J.
Fennelly J.
Between:

JAMIE SINNOTT
A PERSON OF UNSOUND MIND NOT SO FOUND
SUING BY HIS MOTHER AND NEXT FRIEND KATHRYN SINNOTT

Plaintiff/Respondent

and
THE MINISTER FOR EDUCATION, IRELAND AND THE ATTORNEY GENERAL

Defendants/Appellants

and

Between:

KATHRYN SINNOTT

Plaintiff/Respondent

and
THE MINISTER FOR EDUCATION, IRELAND AND THE ATTORNEY GENERAL

Defendants/Appellants

JUDGMENT of Hardiman J. delivered the 12th day of July, 2001.

1. The first of these cases arises from the tragic handicap which has blighted the life of the Plaintiff, and from the response of the State to it. The learned trial judge made declarations and mandatory orders, awarded damages, and adjourned the case for further consideration in 2003. He did so in a manner wholly satisfactory to the Plaintiff's advisers who seek no alteration in his orders. We have been told that these orders have brought about considerable benefit to the Plaintiff: his condition has improved and the improvement has been maintained. We have also been told that, regardless of the outcome of the appeal, the sums awarded will be paid and the regime available to the Plaintiff under the terms of the learned trial judge's order will continue to be available.

2. If the result of the appeal depended on whether the regime mandated by the judge's order was, on the evidence, the best prescription for the Plaintiff, I would agree that it is. But that is not the issue, nor does it form any part of the questions raised by this appeal. Equally, the appeal is not concerned with the general rights of the Plaintiff or of handicapped persons as a class. As argued in this Court the appeal raises narrower, but important, issues which may be summarised as follows:-

(1) Whether Article 42.4 of the Constitution confers the right claimed in the circumstances of this case to lifelong free primary education.

(2) What order, if any should be made in respect of the Plaintiff's education? In particular, has the Court power to make orders, including mandatory orders, formulating the policy to be followed in the education of the Plaintiff, directing in some detail the application of that policy to him and ordering the State to provide, or pay for the provision of services along these lines? If such powers exist in principle, is the present an appropriate case for the making of such orders?

Specific issues not arising.

3. Each party has by deliberate steps arranged that specific issues do not arise on this appeal.

4. The State has conceded that the Plaintiff's rights to free primary education as a child were breached, at least for long periods of time.

5. Accordingly no question arises as to whether the highly specialised services determined by the learned trial judge to be required by the Plaintiff fall within the scope of "primary education" as those words are used in Article 42. The Court approaches the present case on the basis of this concession. But a concession is not a proper basis for an authoritative construction of a constitutional provision. See *State (Quinn) v. Ryan* [1965] IR 70 at 120.

6. Still more significantly, the Plaintiff's advisers have very consciously based their claims exclusively on the first line of Article 42.4:-

"The State shall provide for free primary education.....".

7. Although other articles of the Constitution are referred to in the pleadings and the judgment, this provision emerged clearly as the sole basis of the Plaintiff's contentions on the appeal.

8. This decision has the consequence that the Plaintiff's case prescinds, not only from any alternative constitutional basis, but from any basis at all in the very significant and specific statutory provisions in relation to education and otherwise, and notably from the Education Act, 1998. In answer to a specific question, Counsel for the Plaintiff stated that he did not rely at all on the provisions of this Act, even as an alternative to his preferred argument. He also confirmed that this reluctance did not arise from a view that any of the Acts provisions were repugnant to the Constitution.

9. The case was argued as well as a case could be, and the express narrowing of the Plaintiff's claim was done in pursuance of a very deliberate strategy. This strategy, in turn, is based on a very precisely articulated view of Article 42.4. This is that the right conferred by that provision, unique amongst all the constitutional provisions securing rights to citizens, is a wholly unqualified one *and* extends throughout life if needed. No consideration of expense, or of competing values, alternative claims on State expenditure or of debatable policy, on this view, can interfere with the State's obligation in relation to primary education. This obligation was contended