

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

CIVIL ACTION NO. 260 OF 2015

BETWEEN : VIJENDRA PRAKASH of Lot 1 Omkar Road,  
Narere, and Nasinu in the Republic of Fiji, Farmer  
and Insurance Agent.

PLAINTIFF

AND : DIWAN CHAND MAHARAJ, ANIL PRATAP, RAM  
NARAYAN, SHUSHILA RAMESH, PT. BASWA N  
SHARMA, JAYWANT PRATAP and DEO RAJ SINGH  
as the Board of Trustees of Shree Sanatan Dharma  
Pratinidhi Sabha of Fiji a religious body incorporated  
under the Religious Bodies Registration Act of Chapter 68.

DEFENDANTS

COUNSELS : Mr. K Singh for the Plaintiff  
: Mr. R Singh for the Defendant

Date of Hearing : 26<sup>th</sup> October, 2015

Date of Judgment : 26<sup>th</sup> November, 2015

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## **J U D G M E N T**

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### Introduction

[1] The Plaintiff filed this action against the Defendants seeking declarations regarding the meeting held on 17<sup>th</sup> May, 2015 and for an order for re-hearing of the complaints against him by an independent arbitrator. He is also seeking an injunctive order restraining the Defendants from appointing another National General Secretary until determination of this matter.

### Facts

[2] The Plaintiff was the National Secretary of the Defendants' Board of Religious Trust (the Trust) from 2006 till he was removed in 2015. The said removal is the issue before the court and writ of summons was filed in this regard.

[3] According to the writ of summons the procedure adopted for the removal of the Plaintiff was a breach of his right to natural justice and the particulars of the alleged breaches were contained in the paragraph 12 of the statement of claim.

They were as follows:-

- (a) Not dealing with the complaints as and when they were made.
- (b) Dealing with all complaints at once.
- (c) Dealing with the Complaints under General Matters without any prior notification to either the Plaintiff or the council members.
- (d) Not tabling the Complaints in the Agenda and attaching the complaints for fair and justifiable deliberation.
- (e) Ambushing the Plaintiff with complaints at the meeting.
- (f) Allowing council members who had lodged the complaints against the Plaintiff to sit in the meeting and decide on the Plaintiffs suspension and termination.
- (g) Requiring the Plaintiff to sit outside the meeting whilst complaint letters were being read out and discussed.
- (h) Not being afforded the opportunity to question the Complaints to determine its authenticity.
- (i) Not affording an opportunity to the Plaintiff to call his witnesses who were present on 28<sup>th</sup> June, 2015 to answer to the allegations made after the President was informed that the Plaintiff was outside the meeting with his witness.

[4] The Plaintiff's term of National Secretary was for a three year period commenced from 2013 and it would have end in April, 2016.

[5] Before the end of the said period he was suspended from 17<sup>th</sup> May, 2015 after the Council Meeting on the same day and was removed after formal charges were made and an opportunity for reply was given.

[6] The Plaintiff was the National Secretary from 2006 and he alleged that his suspension and termination was not in accordance with the rules of natural justice and said decision was null and void.

[7] The injunction sought by the Defendant are on the following terms:

*'An injunction restraining the Defendants and or Shree Sanathan Dharam Pratinidhi Sabha of Fiji from appointing another National General Secretary until determination of this matter and /or until such time as the Court may determine'*

## Analysis

- [8] At the outset the Defendants gave an undertaking that they will not venture to appoint another National Secretary till next Annual General Meeting, and will work through an acting appointment. The next Annual General Meeting is scheduled to be held in April, 2016. So, the Defendants have by consent given an assurance that they will not appoint a new National Secretary till next Annual General Meeting to be held in April, 2016. It should also be noted that the Plaintiff's appointment as the National Secretary in 2013 was for three years ending in 2016 April.
- [9] The writ of summons and the motion seeking the injunction was filed on 27<sup>th</sup> July, 2015 and the matter was heard on 26<sup>th</sup> October, 2015. The event that Plaintiff seeks to restrain is a future event that will be taking place in April, 2016.
- [10] There was no breach of right of the Plaintiff to become a perpetual National Secretary of the trust, according to the constitution. The post he was holding had a fixed time period and his term was for a three year period from 2013.
- [11] A new National Secretary being appointed in 2016 in accordance with the constitution of the said religious body is a right that derives to the trust from its constitution. I have not pointed out any provision in the constitution of the said trust that allows this application.
- [12] The Plaintiff is only seeking some declaratory orders regarding the removal of him from the post of National Secretary. The position had a fixed term and that was 3 years.
- [13] Fiji Court of Appeal in Chambers v Wakaya Limited [2011] FJCA 25; ABU0040.10 (decided on 15 March 2011) (unreported) held;

Per Marshall J

*'However I prefer to explain the same principle on the basis that the High Court in Fiji enjoys, as a court dispensing both common law and equity, jurisdiction only in support of a Plaintiff's right of property or other established legal right under Order 29 of the Rules of the High Court to issue quia timet interlocutory interim injunctions. Developed by equity in the nineteenth century this jurisdiction arises where the Plaintiff takes action against alleged infringement by a Defendant of a property or other established legal right. The Plaintiff applies to the Court for an interlocutory injunction restraining the Defendant*

*from infringing that right until trial or further order. At the trial the issue of whether the Defendant has infringed the Plaintiff's right is decided. If the Defendant succeeds he may then obtain damages from the Plaintiff who in order to obtain the interim injunction will have been required to give a cross undertaking in damages.'*(emphasis added)

- [14] The Defendants are members of a religious trust and the decision to appoint a new Secretary would have been taken in 2016 even if the Plaintiff was not removed. The appointment of the National Secretary is a matter for the said trust and the Plaintiff does not have a legal right to prevent it from acting within its constitution to have its Annual General Meeting and the appointment of a new National Secretary in 2016.
- [15] In the circumstances Plaintiff failed to show any infringement of legal right by the Defendant to prevent a new National Secretary being appointed in accordance with the constitution.
- [16] Even if I am wrong on the above the rules regarding the grant of the injunction are well settled in *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504. The first consideration is the serious question of law.
- [17] Even if one considers a serious question to be tried, in relation to the declarations sought by the court relating to the removal of the Plaintiff as the National Secretary his term was limited till 2016 and damages would be an adequate remedy;

In *America Cyanamid* (supra) Lord Diplock at p503 held,

*'As to that, the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage.*

- [18] The Defendants admittedly are in a sound financial status considering its members and its activities. The Plaintiff was appointed for a fixed time period and he cannot prevent another person being appointed for the said post upon the expiration of that time period

in terms of the constitution of the said trust. If there was wrongful removal that would result in damages being awarded as pleaded for the said period till 2016. The post of National Secretary had a fixed term and the fact he held it since 2006, cannot override the provisions of the constitution of the trust to appoint a new National Secretary in terms of its constitution, at the Annual General Meeting in 2016.

[19] **Conclusion**

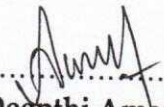
The Defendants gave an undertaking that they will not appoint a new National Secretary till next Annual General Meeting in April, 2016. The Plaintiff's term as National Secretary was for 3 years from 2013. In the circumstances the Plaintiff does not have a legal right to remain its National Secretary after 2016. Any damages sought regarding the removal of the Plaintiff will also confine to the said time period. In the circumstances the application for injunction restraining Defendants from appointment of a new National Secretary is refused. This action could be taken up hearing considering the pleadings before me. Though the pleadings have closed in September, 2015 the summons for directions were filed only in November, 2015 and yet to be issued by the registry. In the circumstances, I make a direction that this matter be expedited, by making suitable directions by the Master. The cost of this application is cost in the cause.

**Final Orders**

- a. The application for injunction is struck off.
- b. The cost of this application will be cost in the cause.
- c. The matter is adjourned before the Master for directions.
- d. This action should be expedited.

Dated this 26th day of **November, 2015.**



  
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Justice Deepthi Amaratunga  
High Court, Suva