

IN THE SUPREME COURT OF SEYCHELLES**ANANDAN PADAYACHY****PLAINTIFF****VERSUS****SEYCHELLES HINDU KOVIL SANGAM****DEFENDANT****Civil Side No 109 of 2010**

.....

Mr. J. Camille for the plaintiff

Mr. D. Sabino for the defendant

RULING**B. Renaud J**

The Plaintiff entered his Complaint on 1st April, 2010 praying this Court for an order to:

- (i) Declaring that the Defendant has wrongfully and unlawfully exclude the Plaintiff from the membership of the Association thereof, by misrepresenting to the Plaintiff that no AGM would be held or at all, pending the conclusion of the civil suit involving the Association, same of which remained pending before the Supreme Court of Seychelles.
- (ii) Declaring that the civil suit bearing case *number 297 of 2008, Seychelles Hindu Kovil Sangam vs K D Pillay*, remains pending before the Supreme Court of Seychelles.
- (iii) Declaring that the act of the Defendant above-mentioned amount to a breach of the rules of natural justice by wrongly and unlawfully excluding Plaintiff from the membership of the Defendant.

- (iv) Declaring that the same act of the Defendant amount in a breach of the Plaintiff's right to vote at the AGM of the Defendant and accordingly a breach of Plaintiff's fundamental right to assemble with other persons in the form of the Association of members.
- (v) Restrain the Defendant from conducting the AGM proposed or any thereafter pending a final order of the same from this Honourable Court.
- (vi) Any other order that this Honourable Court shall deem fit in the circumstances.

On the same day, that is 1st April, 2010, the Plaintiff as Applicant entered an Application for Interim Injunction supported by an affidavit. The Applicant prayed the Court for the following orders:

- (i) That this matter be heard as one of extreme urgency and in any event before the 2nd April, 2010.
- (ii) Of Injunction restraining the Respondent from conducting the Annual General Meeting as advertised in the Seychelles Nation Daily Newspaper for Friday 2nd April, 2010 at 2 p.m. at an unannounced venue or at all, pending the final determination of the suit filed herein seeking for permanent orders of this Honourable Court.

Affidavit Evidence of the Applicant

The Applicant deponed to an Affidavit in support of his Application. The substance of this Affidavit is reproduced hereunder for ease of reference.

The Applicant is a Seychellois citizen who resides and domiciles in Seychelles and belongs to the Hindu Religious Faith and the Respondent is an Association of members registered in Seychelles with the Registrar of Association and is opened to all Hindus who are citizen of Seychelles.

In January, 2009, following a Notice in a local newspaper, members of the Association were requested to pay the annual subscription or membership fee of SR300.00 with a view of thereafter conducting the Annual General Meeting (AGM) of the Association. The Applicant averred that despite paying the said fee, no AGM was conducted by the Association or at all during the year 2009.

The Applicant also averred that as a member, he along with other members wrote to the Secretary of the Association to enquire of the failure to conduct the AGM. The Association acting through its secretary, one K. Durai Pillay, informed the Plaintiff through an open letter addressed to all members, that because of a pending civil suit involving the Association before the Supreme Court of Seychelles, no AGM would be forthcoming or at all, pending its conclusion.

The Applicant further averred that the Association is involved in suit number CS 297/2008 which indeed is still pending before the Supreme Court.

It is also an averment of the Applicant that on 31st December, 2009, a Notice was again posted in the "Nation" newspaper requesting for payment of membership fees. No date was posted as the AGM to be held for the year 2009 or at all. Plaintiff averred that on the basis of paragraph 4 of that open letter from the Association, he has resolved not to pay for the membership fees pending the conclusion of all pending Court matters against the Association.

On 3rd March, 2010, a Notice for the AGM was posted in the “Nation”, signed by the Secretary Mr. Durai Pillay, informing the members that the AGM will be held on Friday 2nd April, 2010 at 2 p.m. with the venue to be announced later.

Applicant averred that the said Notice by the Association goes contrary to the Association earlier communication to all members that no AGM was to be held pending the final conclusion of the civil suit involving the Association and accordingly same act of the Association is a ruse to deprive the Plaintiff of his right of admission as a member of the Association and his right to vote at the AGM, the purpose of which, *inter alia*, is to vote for the office bearers and Members of the New Executive Committee.

The Applicant further averred that the act of the Association stated above amounted to a wrongful and unlawful exclusion of the Plaintiff from the membership of the Association and accordingly a denial of his right to vote at the AGM of the Association.

Alternatively, the Applicant averred that the act of the Association is in breach of its duty to act fairly and in accordance with the rule of natural justice by wrongly excluding the Plaintiff from the membership of the Association thereof.

The Applicant averred that he has a genuine interest in the Association, in that he has met the requirement of admission as member of the Association and has an interest in running the association, as member thereof. He added that should he be excluded from this membership, he will be deprived of his fundamental right to associate with others. He further stated that his right to vote at the AGM of the Association would be infringed by the act of the Respondent.

The Applicant further stated that on the balance of inconvenience, it is more convenient to prevent the Respondent from conducting the AGM on the said date, pending his admission as a member, than the infringement of his right to vote at the AGM of the Association, infringing thereby his fundamental right to assemble and associate with others.

Interim Court Order

The matter was indeed heard as one of extreme urgency on the same day, 1st April, 2010, and the Court accordingly ordered that:

- (i) *An injunction restraining the Respondent from conducting the Annual general Meeting as advertised in the Seychelles Nation Daily Newspaper for Friday 2nd April, 2010 at 2 p.m. at an unannounced venue or at any other place within the jurisdiction of this court be issued so that the status quo is maintained.*

The said interim injunction is issued at the peril and risk of the Applicant and is to remain in force until further ordered by this court. Notice is to be given to all parties concerned and the matter is to be mentioned on the 9th day of April, 2010 at 9.00 a.m. when the Respondent/Defendant will have filed a response to the application.

Affidavit Evidence of the Respondent

From the record it is evident that the Respondent entered its Affidavit-in-Reply on 21st April, 2010 and the matter came up before the Court on 22nd April, 2010. However when the matter was before Court the response of the Respondent was not on the case file hence the matter was adjourned to 6th May, 2010. The matter was further adjourned to 7th June, 2010 to allow time for the Plaintiff to consider the suggestion of the Court to withdraw the matter before Court. Come the 7th June, 2010 the Applicant/Plaintiff was not amenable to withdraw the matter. The matter was mentioned on 28th June, 2010 at 9 a.m. and transferred to me

for further adjudication. On that date the parties through their Respective Counsel agreed for this Court to deliver its Ruling based on the Affidavit of the parties.

Mr. Duraisamy Pillay in his capacity as the Secretary of the Respondent was the one who deposed to an Affidavit-in-Reply, on behalf of the Respondent

He stated that every year, in accordance with the Constitution of the Respondent, interested and eligible natural persons are allowed to subscribe as members of the Respondent in the month of January for the duration of the year.

Natural persons were allowed to become members of the Respondent for the year 2009 in January, 2009 by paying an annual subscription fee of SR300.00.

In the same year, the Respondent sought to hold an Annual General Meeting (AGM), but this was not held due to a caution against holding it, issued by Judge Renaud in one of a number of civil cases involving the Respondent.

For the year 2010, natural persons were notified that they could become members of the Respondent by paying an annual subscription fee or life membership fee in the month of January 2010.

As was the case in 2009, the Respondent sought to hold an AGM for the year 2010. Members were notified of this in an advertisement that appeared on the Nation dated 3rd March 2010. The said advert identified the date and time of the AGM but did not disclose the location.

By an advertisement published on the Nation on the 18th March 2010, the Respondent identified the venue of the AGM.

The AGM had been scheduled for the 2nd April, 2010 but could not proceed due to an order for an injunction applied for and filed by the Applicant on the 1st April 2010 and granted by this court on 1st April, 2010.

Anyone who was eligible for membership of the Respondent could have easily joined the Respondent when the subscription period was open in January 2010. The Applicant was aware of this and failed to renew his subscription. The Applicant is therefore not even a member of the Respondent and has no locus standi.

Membership of the Respondent confers more than just participation in general meetings. Members are provided with formal invitation to several religious events and provided with token gifts such as calendars and sweets amongst other things.

The Respondent did not in any way exclude the Applicant or any other eligible person from joining the Respondent. The very fact that the Respondent advertised the subscription period shows that the Respondent was in fact urging persons to join the Respondent. The Applicant is therefore stopped from claiming otherwise.

If the Applicant did not join when he could have, this is entirely his fault. Should the Respondent and its members suffer because 1 individual failed to join?

In asking for this injunction the Applicant has failed to show that he has a serious issue to be tried.

The Applicant has also not been able to show how the holding of an AGM can cause irreparable damage to him. In fact, any decision taken at a general meeting is always reviewable through future general meetings.

Of course, with the precedent that this court has set in granting this interim injunction, it now appears that any Tom, Dick and Harry who have no locus standi, can pray for an injunction to stop any AGM of any association for frivolous reasons.

On a balance of convenience, 226 members were to participate in the AGM versus 1 Applicant, who isn't even a member. The balance of convenience clearly favours the Respondent.

The Applicant must come to court with clean hands in making this Application, yet he waits until the day before the AGM to spring the Application when he was aware of it for about a month earlier. The Respondent has made numerous expenses in pursuit of holding the AGM.

This application goes against the Respondent's members' constitutional rights to associate and assemble freely, and that if this application is granted, the Supreme Court is setting dangerous precedent – it will mean that (i) non-members can prevent the holding of general meetings of an association; (ii) anyone can prevent an association from holding a general meeting without having to show how such a meeting will cause them irreparable harm; (iii) a minority, in fact, only 1 person, can prevent a general meeting of an association, subverting the interest of hundreds of others, the majority, in exercising their democratic and constitutional right to associate and assemble freely.

He accordingly prayed that this application is dismissed with costs and that the interim order of 1st April 2010 in this case can be vacated.

Basis of Determination of Court

When deciding a matter based on Affidavits of parties the Court takes it that facts deposed by an Applicant which is not traversed or denied by the Respondent are facts admitted by the Respondent.

In this case I find that it is uncontroverted that the Applicant is a Seychellois citizen who resides in Seychelles and belongs to the Hindu Religious Faith. The Respondent is an Association of members registered in Seychelles with the Registrar of Association and is opened to all Hindus who are citizen of Seychelles.

That in January, 2009, following a Notice in a local newspaper, members of the Association were requested to pay their annual subscription or membership fee of SR300.00 with a view of thereafter conducting the Annual General Meeting (AGM) of the Association. Despite the Applicant paying the said fee, no AGM was conducted by the Association or at all during the year 2009.

That as a member of the Association, the Applicant along with other members wrote to the Secretary of the Association to enquire of the failure to conduct the AGM. The Association acting through its secretary, one K. Durai Pillay, informed the Applicant through an open letter addressed to all members, that because of a pending civil suit involving the Association before the Supreme Court of Seychelles, no AGM would be forthcoming or at all, pending its conclusion.

The Applicant admitted that the Association is involved in suit number CS 297/2008 which indeed is still pending before the Supreme Court.

That on 31st December, 2009, a Notice was again posted in the “Nation” newspaper requesting for payment of membership fees. No date was posted as to when the AGM will be held for the year 2009 or at all.

That on 3rd March, 2010, a Notice for the AGM was posted in the “Nation”, signed by the Secretary Mr. Durai Pillay, informing the members that the AGM will be held on Friday 2nd April, 2010 at 2 p.m. with the venue to be announced later.

It is obvious that the said Notice by the Association goes contrary to the Association’s earlier communication to all members that no AGM was to be held pending the final conclusion of the civil suit involving the Association.

Conclusion

I believe it was up to the Applicant to make his free choice basing himself on paragraph 4 of the open letter from the Association. He chose to resolve not to pay for the membership fees for the year 2010 pending the conclusion of all pending Court matters against the Association.

I also believe that it was up to the Applicant to come to whatever view he took of the act of the Respondent. If he came to the conclusion he did he was entirely free to do so. According to the Applicant he concluded that this same act of the Association was a ruse to deprive him of his right of admission as a member of the Association and his right to vote at the AGM, the purpose of which, inter alia, was to vote for the office bearers and Members of the New Executive Committee.

Again according to the Applicant the act of the Association stated in his Affidavit above, amounted to a wrongful and unlawful exclusion of him from the membership of the

Association and accordingly a denial of his right to vote at the AGM of the Association. To this fact, I do not subscribe. The Applicant freely made his choice and came to his own conclusion as to what was best for him in the circumstances. Having made that choice he cannot now lay the consequence arising thereof, on the Respondent.

I hold the same view with regard to the alternative prayer of the Applicant that the act of the Association was in breach of its duty to act fairly and in accordance with the rule of natural justice by wrongly excluding the Applicant from the membership of the Association. I hold that view for reason I have stated in the immediate paragraph above.

The Respondent deponed in his Affidavit-in Reply that – *“In the same year, the Respondent stated that it sought to hold an Annual General Meeting (AGM), but this was not held due to a caution against holding it, issued by Judge Renaud in one of a number of civil cases involving the Respondent”*. That being the case and no order having been made to vary or cancel it, then there is no necessity for this Court to make a similar order once more.

I rule accordingly

.....

B. RENAUD

JUDGE

Dated this 11th day of November 2010

Every year, in accordance with the Constitution of the Respondent, interested and eligible natural persons are allowed to subscribe as members of the Respondent in the month of January for the duration of the year.

Natural persons were allowed to become members of the Respondent for the year 2009 in January, 2009 by paying an annual subscription fee of SR300.00

In the same year, the Respondent stated that it sought to hold an Annual General Meeting (AGM), but this was not held due to a caution against holding it, issued by Judge Renaud in one of a number of civil cases involving the Respondent. Regrettably the Respondent did not indicate to court when and in what case on what day what order the Court made in relation to the holding of AGM.

For the year 2010, natural persons were notified that they could become members of the Respondent by paying an annual subscription fee or life membership fee in the month of January 2010.

As was the case in 2009, the Respondent sought to hold an AGM for the year 2010. Members were notified of this in an advertisement that appeared on the Nation dated 3rd March 2010. The said advert identified the date and time of the AGM but did not disclose the location.

By an advertisement published on the Nation on the 18th March 2010, the Respondent identified the venue of the AGM.

I pause here to ask, if the Court has made order preventing the holding of AGM in 2009 and there is no deponed fact if or when that purported order has been lifted, how come the Respondent is organising the holding of an AGM?

The AGM scheduled for the 2nd April, 2010 could not proceed due to an order for an injunction applied for and filed by the Applicant on the 1st April 2010 and an interim order granted by the court on 1st April, 2010.

Anyone who was eligible for membership of the Respondent could have easily joined the Respondent when the subscription period was open in January 2010. The Applicant was aware of this but did not renew his subscription for reason that no AGM was to be held until the court ordered. It cannot be said that the Applicant is not even a member of the Respondent and has no locus standi because he had never been advised by the Respondent that his membership had expired or had been revoked for non-payment of subscription.

?? What does the rule say?

It may be true that membership of the Respondent confers more than just participation in general meetings but participating in the AGM is a right of a member.

What is of significant importance to the Applicant is that the Respondent admitted that it did not in any way exclude the Applicant or any other eligible person from joining the Respondent. This is indeed strengthened by the very fact that the Respondent advertised the subscription period shows that the Respondent was in fact urging persons to join the Respondent. The Respondent is right when it stated that the Applicant is therefore estopped from claiming otherwise.

Rightly so, if the Applicant did not join when he could have, this is entirely his fault. The Respondent and its members cannot be made to suffer because 1 individual failed to join for his own reason.

It cannot be argued by the Respondent that in the Applicant asking for this injunction the Applicant has failed to show that he has a serious issue to be tried. It is my considered judgment that the Respondent had recourse to such course of action in order to vindicate his right to participate and vote at the AGM.

It is not incumbent on the Applicant to show how the holding of an AGM can cause irreparable damage to him suffice to say that that is his right as a member of the Respondent.

Of course, with the precedent that this court has set in granting this interim injunction, it now appears that any Tom, Dick and Harry who have no locus standi, can pray for an injunction to stop any AGM of any association for frivolous reasons.

On a balance of convenience, 226 members were to participate in the AGM versus 1 Applicant, who isn't even a member. The balance of convenience clearly favours the Respondent.

8

The Applicant must come to court with clean hands in making this Application, yet he waits until the day before the AGM to spring the Application when he was aware of it for about a month earlier. The Respondent has made numerous expenses in pursuit of holding the AGM.

This application goes against the Respondent's members' constitutional rights to associate and assemble freely, and that if this application is granted, the Supreme Court is setting dangerous precedent – it will mean that (1) non-members can prevent the holding of general meetings of an association; (ii) anyone can prevent an association from holding a general meeting without having to show how such a meeting will cause them irreparable harm; (iii) a minority, in fact, only 1 person, can prevent a general meeting of an association, subverting the interest of hundreds of others, the majority, in exercising their democratic and constitutional right to associate and assemble freely.