

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2018-02024

BETWEEN

**VIDYA RAMACHALA
PARVATI RAGUNANAN also known as JEAN PARVATIE RAGUNANAN
KISSMATTEE SEEPERSAD
RAVI RAMBARRAN
SANGEETA JAGDEO**

Claimants

AND

**PETRONILLA NIRMALLA BASDEO
THE ARYA PRATINIDHI SABHA OF TRINIDAD**

1st Defendant

2nd Defendant

Before the Hon. Madam Justice C. Gobin

Appearances:

Ms. Saira Lakhan for the Claimant

Mr. Jared Jagroo instructing Mr. A. Pariagsingh for the first Defendant

Mr. Michael Rooplal for the second Defendant

REASONS

1. The Arya Pratinidhi Sabha of Trinidad (APS) is the locally incorporated chapter of the International Aryan Samaj of India. Both the head organisation (the Samaj) and the APS have constitutions which contain rules and bye laws of their respective organisations.
2. The APS, Trinidad was incorporated by Ordinance No. 43 of 1943. The current rules were published in Legal Notice No. 59 of 1973.

3. The rules of the Delhi Samaj and the local APS bear certain similarities. The **ten (10) principles of the Arya Samaj** are contained in both as founding principles. These very lofty ideals are worth repeating here: -

1. **God is the cause of all Knowledge and of all that is known through Knowledge;**
2. **God is Existent, Intelligent and Blissful. He is Formless, Omnipotent, Just, Merciful, Unborn, Endless, Unchangeable, Beginningless, Unequaled, the Support of all, the Lord of all, All-Pervading, All-Controlling, Unchanging, Immortal, Fearless, Eternal and Holy, and the Maker of the Universe. To Him alone worship is due;**
3. **The Vedas are the scriptures of true Knowledge. It is the first duty of all Aryas to read them, teach them, recite them and hear them being read;**
4. **One should always be ready to accept Truth and to give up Untruth;**
5. **One should do everything according to the dictates of *Dharma* (righteousness) i.e. with due regard to Right and Wrong;**
6. **The primary object of this Society is to do good to the whole world, i.e. to achieve its physical, spiritual and social progress;**
7. **One's dealings with all should be regulated by Love and Justice in accordance with the dictates of *Dharma* (righteousness);**
8. **One should promote Vidya (knowledge) and dispel Avidya (ignorance);**
9. **One should not be content with one's own welfare but should look for one's own welfare in the welfare of all;**

10. One should regard oneself under restriction in following rules of social welfare, while in following rules of individual welfare all should be free.

4. In addition to the guiding principles, the basic structure of both organisations and the provisions for the administrative operations of both may contain important similarities.
5. They both provide for the Annual Election of an Executive Committee. In the case of the Delhi Constitution clause 11, provides: -

“Antaranga Sabha (Executive Committee)

11. The Antaranga Sabha will be constituted to manage all affairs of the Samaj and it will consist of members of three kinds: -

- (1) Office bearers**
- (2) Distinguished members**
- (3) Representative members.”**

6. In both cases the office bearers are identical, save that in the local APS there is additional provision for a senior and junior Vice President and Auditors.
7. Both provide rules for calling of meetings. While the Delhi Constitution provides for daily and weekly religious meetings leaving room for raising important matters even at such, the general administrative meetings provided for, contemplate annual meetings for the election of officers and extra ordinary meetings when the President desires it and directs the Secretary to that effect and when the Executive Committee desires it. There is also provision for a requisition in certain circumstances from the membership.

8. In Trinidad, the rules provide for regular monthly meetings at such place as the Executive Committee may determine, for “special meetings” which shall be held at such time and place as may be determined by the President, and for meetings to be fixed upon a requisition by ten (10) financial members of the Association. Special provision is made for the programme at the Annual Meeting for the election of officers including for the presentation of reports etc.
9. The rules of the APS specifically provide where the rules are silent in some circumstances for the application of the **Principles and Bye-Laws of the Constitution of the Arya Samaj.**

Rule 21 provides: -

“Any matter arising out of the work of the Association and not being provided for by these rules shall be regulated by the principles and bye-laws of the Arya Samaj promulgated by the International Aryan League of Delhi India.”

10. It is not necessary at this point to detail the unfortunate circumstances which have led to this litigation. What is clear is that there is some rift between the President and certain members of the executive on one hand and other members of the Executive and the organisation on the other. Since the date of filing it appears that the relationship between these factions has only worsened. There have been allegations and cross claims of misconduct on both sides, allegations of abuse of power and office on the part of the president, and claims of attempts at unlawful ouster of officers from their duly elected posts. These court proceedings have only fanned the flames and the rift worsened and the basic functioning of the APS has been adversely affected. So divided is the organisation

that even the issue of representation of the second defendant was contentious. The matter began with hearings for urgent injunctive relief.

11. The approach of the court has at all times been to maintain the status quo and to proceed to the core issue in the case which is one of interpretation of the constitution. At the last hearing of the matter on 25th September 2018, at the end of yet another contentious session. Counsel for the parties agreed that the issues in the case could be narrowed, that judicial time could be saved if legal issues could be identified and agreed and submissions filed on those. The benefits of such a sensible course were, first, it would relieve the court of the task of having to determine allegations of conduct. Secondly, it would avoid continuing concerns by some of conflicts in legal representation of the APS. Further, since the identification of legal issues was a matter for Counsel, agreement on strict legal issues would avoid allegations of conflicting or unauthorised instructions to Counsel for the APS from one faction or the other. (As was shown in the end, the issues of law identified by all parties were essentially the same).

12. It was accepted that once the court completed the construction exercise, issues as to the validity of actions of the competing factions would be settled. Directions were then given for the identification of the legal issues, for the filing submissions and for the delivery of a decision on 4th October 2018. When a new application for an injunction was filed on 20th September 2018, the date of the ruling was brought forward.

13. The questions which were submitted individually by the parties including the added parties essentially raise the same issues. They required an interpretation of what under the APS

constitution are the powers of the President, the Executive Committee and the membership (the second defendant) and the limits of them.

14. I should state that for the purposes of this ruling I did not deal with the issues identified as (6), (7) and (9) of the President's Statement of issues. A determination of those would necessarily have involved a finding of fact and the agreement that the court would deal with legal issues solely so as to avoid further conflict would have been defeated.

15. I found it helpful to adopt the formulation of the issues as they were submitted by the Second Defendant as follows: -

- (a) Whether the Executive Committee of the Second Defendant is the administrative arm of the Second Defendant, and accordingly makes decisions on behalf of the Second Defendant.**
- (b) Whether decisions of the Executive Committee must be ratified and/or approved by the general members of the Second Defendant, and if so, to what extent.**
- (c) Whether the First Defendant as President of the Second Defendant can veto and/or overrule decisions of the Executive Committee.**
- (d) What is the process for the appointment of the Second Defendant's School Board of Management?**
- (e) What are the applicable standards and procedure for the auditing of the financial statements of the Second Defendant and its School Board of Management?**

16. The rules of the APS expressly provide for the establishment of the Executive Committee "which shall consist of the officers of the association defined". So what is the role of the executive and what is the status of decision made by the Executive Committee. This issue lies at the heart of the dispute.

17. The President has relied upon Rule 17 (a) and (b) for support for an interpretation which limits the powers of the Executive Committee.

Rule 17 provides:

(a) The Executive Committee shall deal with all matters which may be referred to them and shall report their decisions, findings or recommendations at the first regular meeting thereafter;

(b) In the cases of emergency the President may refer any matter to the Executive Committee for their decision provided however that such decision be ratified by the Association at its next regular meeting.

18. The President submits that on the basis of the above rule, the Executive Committee may only deal with matters which may be referred to them by the APS or the President in an emergency and impliedly by her argument, no other matters. She further contends that any decision finding or recommendation must be brought to the attention of the membership of the APS at its next regular meeting for ratification. This is what appears on the face of the rule.

19. Her argument continues, that all decisions or recommendations from these referred matters must go back to general membership and if they are rejected by the APS then she, as their President, is bound by the decisions of the APS. In other words on all matters the decisions of the membership of the APS prevail over all decisions of the Executive Committee. The interested parties appear in their submissions to support this interpretation.

20. On the other hand the Claimant claims that though there is no express provision vesting power in the Executive Committee to make day to day decisions, this power is to be implied. Such implied power is reasonably necessary to enable the Executive Committee to do their job of running the APS.
21. The second defendant too, urges while there is no specific power conferred for the day to day administration of the APS, in the light of the fact that the rules expressly identify those situations and circumstances in which decisions are subject to ratification by the members, the court should construe the rules so as to limit that obligation to return to the general membership of the APS, only in those specified circumstances.
22. I do not consider the powers of the Executive Committee to be as circumscribed as the President and the Interested Parties argue. While there is no express term providing for the powers of the Executive Committee, I think it is appropriate to invoke Rule 21 of the Constitution of the APS and to interpret the role and powers of the Executive Committee in accordance with the Delhi Rules. They vest power in the corresponding body, the Antaranga Sabha, to manage all the affairs of the Samaj.
23. I reject an interpretation which limits the jurisdiction of the Executive Committee to the specific provision of 17 (a) and (b). I do not consider these to be exhaustive of the powers of the Executive Committee. Rule 17 (a) is an important rule that mandates that the Executive Committee must deal with those matters which may be referred by the membership. But this is in addition to the day to day their management powers. It is in those circumstances, where matters have been referred, by the membership that they are required to report their decisions, findings, recommendations at next regular meeting. This

is what respect for the membership would require. Another instance of the imposition of mandatory obligation in addition to the day to day responsibilities of the Executive Committee is to be found in rule 8 which directs the Executive Committee to prepare and present a Budget.

24. Section 17 (b) also creates a specific exception which allows the President in cases of emergency to refer a matter for urgent decision. It allows the Executive Committee to make a decision subject to ratification. This is another instance of an exception in which ratification by the full body is required. The others are expressly provided for in **Rule 8 (f)** and **14 (f)**.

8. (f) The Executive Committee may make standing orders for conduct of its own meetings but such standing orders shall be of no effect unless approved by the Association at a Special or General Meeting and shall remain in force until revoked, repealed or amended by the Association at a Special or General Meeting.

14. (f) Withdrawal forms for any or all moneys deposited in the bank must be signed by the Treasurer and President, on the authority of the Executive Committee by resolution passed by any of its meetings to that effect PROVIDED however, that sums in excess of \$500 may be withdrawn only with the authority of the Association by resolution passed at any of its meetings.

25. The rules could not contemplate that with a membership of 421 financial members (according to the President's affidavit) every decision of the Committee, however trifling would be put to the vote of the membership every month.

26. If more were needed on this I find support for my construction in the very objects of the

APS Rules S. (2) (g) (l) (n).

S. (2) (g) To print and publish any newspapers, periodicals, books or leaflets that the Association through its Executive Committee may think desirable for the promotion of all or any of its objects.

(l) To invest any moneys of the Association not immediately required to carry on its objects, in such a manner as may be determined by the Executive Committee and in conformity with its objects, and to employ the income therefrom for its benefit.

(n) And to do all such things for the spiritual, intellectual, moral, social, physical and economic improvement of its members generally as may be deemed fit and proper by the Executive Committee.

27. Here is evidence of the vesting of wide discretionary powers in the Executive Committee.

This confirms not just the jurisdiction over the day to day administrative affairs. It goes well beyond what the President claims to be the limit of power in Rule (17). This confirms the vesting of a serious responsibility for the promotion of the fundamental objects of the APS in its elected Executive Committee with the necessary implied powers to discharge it. The construction contended for by the president would remove the power on the part of the Executive Committee to exercise its collective discretion on very core issues contemplated by the Rules. It would consequently significantly undermine the objects of the APS.

28. I therefore reject the submission that the Executive Committee is bound by decisions made by the membership where decisions of Executive Committee are in conflict with membership. It follows that the President's claim that in such circumstances she is bound by the will of the majority is rejected. Such an indirect veto of the decisions of the Executive Committee is not contemplated by the rules and is indeed inconsistent with them.

29. The powers of the president are circumscribed by the **Rule S. 11** prescribes the powers of the President at meetings of the Association.

11: (a) The President shall, if present, preside at all meetings of the Association.

(b) He shall maintain order at meetings and his ruling on all points of procedure shall be final.

(c) He shall possess the right to give a casting vote as well as an ordinary vote.

(d) He shall countersign all vouchers for payment of money

(e) He shall, at each meeting, sign the minute book of the Association kept by the Secretary.

30. Nothing in the rules allow the President to override the decisions of the Executive Committee. In appropriate cases where matters are put to the floor in a monthly meeting the President is allowed a casting vote. But in the ordinary course of things, decisions of the Executive Committee properly made and passed with the requisite majority would not ordinarily be expected to be raised by any Committee member or officer at monthly meetings. If this were allowed all decisions of the Executive Committee would be open to

review at all monthly meetings. Good order and governance of the organisation would be frustrated and defeated if the rules are construed so as to allow this.

31. The President and the interested parties have sought to argue that the APS is a democratic organisation and that the will of the membership should prevail. But the APS has a structure which is established by rules which include the election of officials. The insistence on compliance with rules and the recognition of structure does not remove democratic rights. Indeed compliance with the constitution and the preservation of the hierarchical structure is in this case as in most a necessary ingredient for the protection democratic rights of members of the organisation.

32. But these rules do not ignore the rights of the general membership. The rules provide for Special Meetings to be held on the President's call or upon a requisition by ten (10) financial members. There are specific provisions for **notice (6 (d) and (e))**: -

6. (d): Every special meeting called on the requisition of the members of the Association shall be held not more than thirty days from the receipt of the requisition by the Secretary.

(e): Every member of the Association must be given at least seven clear days notice by publication in a local daily newspaper of every special or annual meeting of the Association PROVIDED that in the case of a special meeting the notice for the meeting must also specify the purpose for which the meeting is summoned.

The rules therefore do not ignore the rights of the general membership. This rule allows the general membership at any time to call upon the executive to call a special meeting.

This assures the protection of the democratic rights of the members and the requirements for notice assure the informed and active participation of all members on important and extra-ordinary matters.

33. The rules also prescribe how members of the executive may be removed. I suppose arguably there is nothing to prevent a call for the removal of the entire executive, provided that proper notice is given in accordance with the rules and in those circumstances and provided that there is a full opportunity for the executive to be heard and for a fair process.

34. The parties have on the invitation of the Court agreed on the following matters:

(a) The constitution of the second Defendant's Schools Board of Management consist of the following persons who were appointed by the majority of the Executive Committee on May 19, 2018 namely: - Jassodra Ragbirsingh (Secretary), Jewan Singh, Roshan Parasramsingh (Ass. Secretary), Vidya Ramachala, Ravi Ramsaran, Vasudew Vishnue and Parvati Ragananan.

(b) The unaudited accounts of the School Board of Management shall be presented by the Secretary of the School Board of Management at the Annual General meeting of the APS each year.

Determination

35. It is ordered and declared that:

1. The Executive Committee is the administrative arm of the second defendant, and can make binding decisions on behalf of the second defendant.
2. Decisions of the Executive Committee are subject to ratification by the general membership of the second defendant only in limited, specific instances as set out in the Rules; i.e. Rule 17 (b), 14 (f) and 8 (f).
3. The President of the second defendant cannot veto and/or overrule decisions of the Executive Committee.
4. The constitution of the second Defendant's Schools Board of Management consist of the following persons who were appointed by the majority of the Executive Committee on May 19, 2018 namely: - Jassodra Ragbirsingh (Secretary), Jewan Singh, Roshan Parasramsingh (Ass. Secretary), Vidya Ramachala, Ravi Ramsaran, Vasudew Vishnue and Parvati Raguananan.
5. The unaudited accounts of the School Board of Management shall be presented by the Secretary of the School Board of Management at the Annual General meeting of the APS each year.
6. All parties undertake that there will be no withdrawal of the second defendant's fund for payment of legal fees.
7. Issue of costs stayed until the next hearing.
8. All injunctions granted previously are to discontinue.
9. Notice of Application filed 20th September, 2018 is adjourned to the **10th December, 2018 at 10.30 am in Courtroom POS08.**

Dated this 1st day of October 2018

CAROL GOBIN
Judge