

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2023-03253

PUNDIT HARDEO MAHARAJ

First Claimant

PUNDIT TEKA SAMNARINE

Second Claimant

AND

**KRISHNA RAMBALLY PRESIDENT OF THE SANATAN DHARMA MAHA SABHA OF
TRINIDAD AND TOBAGO ALSO CALLED THE SANATAN DHARMA OF TRINIDAD
AND TOBAGO INC**

First Defendant

**VIJAY MAHARAJ SECRETARY GENERAL OF THE SANATAN DHARMA MAHA
SABHA OF TRINIDAD AND TOBAGO ALSO CALLED THE SANATAN DHARMA OF
TRINIDAD AND TOBAGO INC**

Second Defendant

**DR. RAMPERSAD PARASRAM THE DHARMACHARYA OF THE SANATAN
DHARMA MAHA SABHA OF TRINIDAD AND TOBAGO ALSO CALLED THE
SANATAN DHARMA OF TRINIDAD AND TOBAGO INC**

Third Defendant

**RISHI MAHARAJ SECRETARY OF THE PANDITS' PARISHAD AN INSTITUTION OF
THE SANATAN DHARMA MAHA SABHA OF TRINIDAD AND TOBAGO ALSO
CALLED THE SANATAN DHARMA OF TRINIDAD AND TOBAGO INC**

Fourth Defendant

**NAVIN OMADATH MAHARAJ PRESIDENT OF THE PANDITS' PARISHAD AN
INSTITUTION OF THE SANATAN DHARMA MAHA SABHA OF TRINIDAD AND
TOBAGO ALSO CALLED THE SANATAN DHARMA OF TRINIDAD AND TOBAGO
INC**

Fifth Defendant

BEFORE THE HONOURABLE MME JUSTICE KAREN REID

Appearances:

Mr. V. Maharaj, Ms. V. Ramroop, Mr. A. Mahabir instructed by Mr. S. Seecharan for the Claimants

Mr. R. Dass SC, Ms. V. Maharaj instructed by Mr. V. Gopaul-Gosine for the Defendants

DECISION ON THE CLAIMANTS' APPLICATION FOR INTERIM INJUNCTIVE RELIEF

1. On September 1, 2023, the Claimants filed a claim together with an urgent application for the following interim injunctive relief:
 - i. An Injunction to restrain the Defendants by themselves either singularly or collectively or by their servants or agents or howsoever otherwise from altering and falsifying the list of persons entitled to vote at an elections of the unincorporated amalgamated association known as the Sanatan Dharma Maha-Sabha to elect thirty-one persons inclusive of the President general and Secretary General to sit on the institution described in the Constitution as the National Executive;
 - ii. An Injunction to restrain the Defendants by themselves either singularly or collectively or by their servants or agents or howsoever otherwise from holding an election of Officers and Executive Members of the Sanatan Dharma Maha-Sabha scheduled for Sunday 10 September, 2023 or any other date pending the hearing and determination of the Claim filed herein;

- iii. An injunction to restrain the First, Second and Fourth Defendants by themselves either singularly or collectively or by their servants or agents or howsoever otherwise from taking control or interfering with the procedure to elect the thirty-one members inclusive of the Secretary General (Ag) and the President General of the National Executive of the unincorporated amalgamated association known as the Sanatan Dharma Maha-Sabha;
 - iv. An Injunction to restrain the First Defendant from acting and holding himself out as the President general or from acting as Trustee, presiding over Conferences of Delegates, enforcing the rules of the Constitution signing any cheques or notes nominating persons to sit on committees of the Executive of the unincorporated amalgamated association known as the Sanatan Dharma Maha-Sabha by himself or his servants or agents or howsoever otherwise;
 - v. An Injunction to restrain the Second Defendant by his servants or agents or howsoever otherwise from acting as trustee being in custody of the records, from recording the minutes of meetings or carrying out any secretarial duties of the unincorporated amalgamated association known as the Sanatan Dharma Maha-Sabha.
2. The application was supported by the affidavit of Pundit Bhadase Seetahal-Maraj sworn to and filed on September 1, 2023 and the affidavit with exhibits of the First Claimant also sworn to and filed on September 1, 2023.
3. A supplemental affidavit of the First Claimant was sworn to and filed on September 5, 2023. However, at the hearing on the application on September 6, 2023, the Claimants indicated that insofar as that affidavit

had not been served on the Defendants they would not be relying on the same, especially since its purpose was to introduce an exhibit into evidence, which said exhibit was annexed to the Defendants' affidavit in opposition.

4. The Defendants' affidavit and exhibits in opposition was sworn to by the Second Defendant and filed on September 6, 2023 before the hearing. The Defendants also filed a brief note and submissions on the September 6, 2023 and the Claimants transmitted its own bundle of authorities to the Court at the hearing.
5. The application was heard on September 6, 2023 and was adjourned to today for decision.

LAW & DISCUSSION

Interim Injunctions.

6. Part 17.2(1) of the CPR allows the court to grant interim injunctions at any time during proceedings, and the manner in which that equitable jurisdiction is to be exercised is well known. In **National Commercial Bank Jamaica Ltd v Olint Corpn Ltd (2009) 1 WLR 1405** the Board set out the relevant principles at paragraphs 16-19 of its judgment as follows:

“16...The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in American Cyanamid Co v Ethicon Ltd [1975] AC 396 that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendants freedom of action

by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.

17 In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irreparable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. **The basic principle is that the court should take whichever course seems likely to cause the least irreparable prejudice to one party or the other...**

18 Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strength of the parties' cases.

19 There is however no reason to suppose that, in stating these principles, Lord Diplock was intending to confine them to injunctions which could be described as prohibitory rather than mandatory. In both cases, the underlying principle is the same,

namely, that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other..."

7. At this stage of proceedings, the Court is not embarking upon a mini-trial geared toward resolving conflicts of evidence, finding facts or making a determination on the legal issues which arise on the parties' pleadings. Those matters are for trial after all the evidence has been led and been tested by cross-examination and detailed legal arguments have been made and considered. As set out above, the court is concerned with determining whether irremediable prejudice is likely to be caused more by the grant or refusal of the injunction and to make an order that is likely to produce the least harm. In the words of De La Bastide CJ in the case of **East Coast Drilling and Workover Service Ltd v Petroleum Co of Trinidad and Tobago Ltd (2000) 58 WIR 351 at page 358 f** – *the court must consider where the balance of justice lies* – does the greater risk of injustice lie in granting or refusing the injunction? This involves making an assessment not only of the quantum of the risk that injustice may occur but also the extent of the injustice that may occur. This exercise necessarily involves an assessment of the relative strengths of the parties' cases.

8. Before embarking on that assessment, it is useful to set out the organizational framework of the Sanatan Dharma Maha-Sabha (SDMS). On April 16, 1950, the Hindu Sanatan Dharma Association of Trinidad and the Sanatan Dharma Board of Control resolved to amalgamate the two (2) bodies into one Association to be called the Sanatan Dharma Maha-Sabha of Trinidad and Tobago and by Act No. 41 of 1952, a body corporate called "The Incorporated Trustees of the Sanatan Dharma Maha-Sabha of Trinidad and Tobago" was established comprising four (4) Trustees and their successors in perpetuity, which was to act subject to the rules and

regulations of the SDMS and had power to acquire, hold and alienate land and other property. Those rules and regulations were as set out in its Constitution, which was revised from time to time.

9. The general structure of the SDMS, as set out in its Constitution, is as follows:

- i.* The SDMS is to consist of the Parent Body, the Executive¹, the District Branches, the Maha Sabha Pandits Parishad, The Maha Sabha Teachers Association, the Youth Group and the Ladies Group².
- ii.* The Parent Body comprises 4 delegates elected by each registered Branch of the SDMS³, 4 delegates elected by the Pandits' Parishad⁴, 4 delegates elected by the Teachers' Association⁵, 4 delegates of the Youth Group⁶ and 4 delegates of the Ladies Group⁷.
- iii.* The Parent Body must hold two "Conferences of Delegates"⁸ each year to be held on the second Sunday in September and March or at such other date and time as the Executive decides and the election of Officers (to the Executive) takes place at the September Conference⁹.
- iv.* District Branches, also referred to as Branches, Registered Branches, Financial Branches and Registered Financial Branches at

¹ Also called the Executive Committee or the Central Executive at various parts of the Constitution

² Section 5

³ Section 6

⁴ Section 14

⁵ Section 16

⁶ Section 16 (a)

⁷ Section 16 (a)

⁸ This is also referred to as "The General Conference" at various parts of the Constitution and in the Interpretation Section of the Constitution this is also defined as including the delegates from branches together with the Executive.

⁹ Section 6 (b) and (c)

various points in the Constitution, are a collection of twenty-five (25) or more Sanatanatist Hindus who organize themselves into a branch and is registered as a Branch of the Maha Sabha following the approval of the Executive. Such branches are required to pay a registration fee of five dollars (\$5.00) and an annual renewal fee of five dollars (\$5.00) to be kept on the Register of Branches¹⁰. All adult members must pay one dollar (\$1.00) to join a branch and five dollars (\$5.00) annually to be a financial member¹¹.

- v. The Executive holds office for five (5) years¹² and comprises the President General, Secretary General, twenty-nine (29) members elected at the September Conference, the Dharmacharya, six (6) pundits elected by the Pandits' Parishad and twelve (12) other Sanatanist Hindus nominated by the President General and Secretary General¹³.
- vi. Candidates for election to the office of President General and Secretary General must be nominated by ten (10) Branches by the 15 of August of the year in which elections for those positions are to be held¹⁴. Within seven (7) days of being elected, the President General and the Secretary General must name six (6) Vice Presidents, six (6) Assistant Secretaries, two (2) Trustees¹⁵, one (1) Treasurer, two (2) Official Advisers and one (1) Auditor; presumably from among the twenty-nine (29) other members elected at the September Conference¹⁶.

¹⁰ Section 4

¹¹ Section 4 (d)

¹² Section 7 (a)

¹³ Section 8 (a)

¹⁴ Section 6 (d)

¹⁵ Since the President General and Secretary General are both Trustees

¹⁶ Section 7 (d)

- vii. The Dharmacharya is appointed by the Executive in consultation with the Pandits' Parishad and is the religious adviser to the SDMS¹⁷.

10. The case for the Claimants in support of their application can be summarized as follows:

- i. The last election was held in September, 2018 at which Pt Utham Maharaj was elected the President General, Mr. Satnarayan Maharaj was elected Secretary General and the other members of the Executive were duly elected and appointed.
- ii. Elections are constitutionally due in September 2023.
- iii. No Conference of Delegates was held in March 2023 in violation of the Constitution. This is untrue as a Conference was held in April, 2023.
- iv. The election process is a two tier process that begins at the March Conference where the Conference is required to approve three (3) resolutions: namely, 1. Declaring that nominations are open and inviting financial members to file nomination papers for the post of President General and Secretary General. 2. The appointment of a Returning Officer. 3. The date that the Returning Officer will announce the list of Candidates. It is important at this stage to note that there is nothing in the Constitution that prescribes or supports these assertions or is capable of suggesting that the election process is a two tier process or that anything concerning the election of the Executive is required to occur at the March Conference. The only Constitutional provision relating to nominees is that contained in Section 6(d) which requires nominations to the posts of President General and Secretary General to be supported

¹⁷ Section 15

by ten (10) Branches and made by the 15 August prior to the September Conference in the year in which the election is due to occur.

- v. The alleged second tier commences on the date fixed by the March Conference for the Returning Officer's announcement of the List of Candidates. On making this announcement, the Returning Officer must provide candidates with a list of delegates together with a document indicating their acceptance as a Candidate, which document allows the Candidate to attend the September Conference. Again, it is important to note that nothing in the Constitution provides for the appointment of a Returning Officer, whether at the March Conference or at all, or for the announcement of any List of Candidates or provision of any list of delegates, whether by a Returning Officer or at all.
- vi. The alleged second tier continues with Candidates being required to be informed of the opposing Candidates and being given an opportunity to seek the support of delegates and finally ends with the holding of the election at the September Conference at which the Executive appoints four (4) persons to assist in conducting the poll. While the Constitution does not make any provision for the first part, section 17 of the Constitution does set out the Agendas for the General Conference and the September Conference¹⁸

¹⁸ The Agenda for the September Conference being:

- (1) Examination of Delegates' Credentials
- (2) Opening Prayer
- (3) President's address
- (4) Executive Committee's Report
- (5) Reports
- (6) Adoption or Amendment of Rules
- (7) Resolutions
- (8) Audited Financial Reports for the Previous Year ending 31st December
- (9) Election of Executive Committee and Officers
- (10) Miscellaneous
- (11) Closing Prayer

respectively and section 18 of the Constitution sets out the Standing Orders which govern the conduct of the General Conferences¹⁹.

- vii. The Claimants allege that no Notice has been sent convening a September Conference of Delegates which is Constitutionally due on September 10, 2023 since both the letter dated July 21, 2023 issued to Branches and the newspaper advertisement published on August 21, 2023 cannot be construed as such a Notice because both refer only to an "Election of officers" taking place and not to a "General Conference".
- viii. The Claimants also allege that the first, second and fourth Defendants are unlawfully acting as President General, Secretary General and Secretary of the Pandits' Parishad respectively and, therefore, have no authority to call for or conduct this election.
- ix. In relation to the first Defendant, the previous President General elected in September 2018 died on the 22 November, 2018. No valid election to replace the President General for the remainder of his term was held at the September 2019 Conference of Delegates in accordance with section 7(b)²⁰ of the Constitution. As such, the

¹⁹ In relation to the Standing Orders, the only clause relevant to voting is section 18 (10) which provides: "Two or more tellers and two scrutineers shall be elected by the Executive Committee. It shall be the duty of the Tellers to count votes by show of hands and distribute and collect paper ballots. It shall be the duty of Scrutineers to satisfy themselves that the ballot papers have been counted in accordance with the Rules, and report the result to the President General in writing."

The only other rules related to the conduct of elections and voting in the Constitution are contained in the second section 12 (beginning on page 35 of the Constitution) at sub-sections (9) and (10) thereof which provide:

"(9) Except with his consent to serve in writing, giving a reasonable excuse for his absence no person shall be elected to serve in any office or position in the Maha Sabha in absentia.

(10) The President General and Secretary General shall be elected by secret ballot. All other voting shall be by a show of hands except where a successful motion for a secret ballot has been passed."

²⁰ Section 7(b) of the Constitution provides that: "If for any reason the Office of President General becomes vacant, the First Vice-President shall carry out the duties of President General

first Defendant is occupying the position of President illegally since 2018.

- x. In relation to the second Defendant, the previous Secretary General elected in September 2018 died on 28 November 2019. No September Conference of Delegates was held in 2020 for the election of a new Secretary General to fill that position as is required by section 7(c)²¹ of the Constitution. As such, the second Defendant has been illegally occupying or acting in the post of Secretary General since 2019. The Claimants allege that the second Defendant, as First Assistant Secretary, could not act as Secretary General in accordance with section 10(d)²² of the Constitution because although the section permits Assistant Secretaries to act for the Secretary General in his absence, “absence” cannot be construed to include death, which is of a permanent nature and which would then require a section 7(c) election.
- xi. In relation to the fourth and presumably the fifth Defendants, the Claimants allege that the Defendant fraudulently conducted an election of the Pandits’ Parishad on 19 July, 2023 and wrongfully installed the fourth Defendant as its Secretary and the fifth Defendant as its President. The basis of this allegation is that in April 2017, the former Secretary General disbanded the existing executive of the Pandits’ Parishad that had been duly elected in 2013 and appointed a new executive. An election was carded for 2018, which did not take place. An election was constitutionally

until the next September Conference when a new President General shall be elected for the remainder of the term.”

²¹ Section 7(c) of the Constitution provides that: “If for any reason any Elected Officer shall be unable to carry out his duties, then at the next September Conference new Officers to replace persons shall be elected for the remainder of the term.”

²² Section 10(d) of the Constitution provides that: “The Assistance (sic) Secretaries in the order settled by the President General and the Secretary General will generally assist the Secretary General in his duties and act for him in his absence.”

due²³ in August 2023 but was wrongly held on 19 July, 2023 and no election was held for the four (4) delegates for the September Conference or for the six (6) representatives that were to be part of the new Executive of the SDMS. This allegation appears to stem from a letter dated 7 July, 2023 (exhibited as “E” to the 1st Claimant’s affidavit) which notifies persons of the 19th July 2023 election of officers for the executive of the Pandits’ Parishad but makes no mention of an election in respect of the 4 delegates and 6 representatives.

- xii. The first and second Defendants have committed a number of allegedly illegal and fraudulent acts to control the election and deprive the Claimants of their right to participate in the elections, including:
- a. Wrongly denying that Exchange Branch No. 35 was a registered financial Branch by its letter dated 19 April, 2023 (exhibited as “L” to the first Claimant’s affidavit) thereby denying the Claimants the right to contest the elections or nominate a candidate of their choice²⁴
 - b. Failing to inform the membership that nominations commenced and of the appointment of a Returning Officer
 - c. Illegally holding themselves out to the members of the SDMS

²³ Section 14(2) and (3) of the Constitution provides as follows:

(2) In the month of August preceding the General Conference of the Maha Sabha, the Pandits’ Parishad shall elect its officers including the following:

- (a) Four delegates to the Maha Sabha Conferences.
- (b) Six representatives to the Executive.

(3) Within seven days of the election of officers the Secretary of the Parishad shall transmit in writing to the Secretary General of the Maha Sabha the names and address of:

- (1) the elected officers and
- (2) the delegates and representatives referred to in section 2 above.

²⁴ This issue will be dealt with more fully when it comes to the issue of the locus standi of the Claimants and delay

- d. Illegally communicating with select branches of the SDMS directing that they be indorsed as candidates for the election
- e. Illegally directing District Branches to nominate them as President General and Secretary General as evidenced by undated letters exhibited as “N” and “O” to the first Claimant’s affidavit
- f. Failing to divulge or publish the list of persons entitled to vote at the election
- g. Engaging in vote padding as evidenced by a text message from the fourth Defendant to members (exhibited as “P” to the first Claimant’s affidavit)

11. From the outset, it must be borne in mind that the Defendants indicated that they were unable to respond to all of the allegations of the Claimants given the shortness of time between the service of the application upon them on 5 September, 2023 and the hearing of the application on 6 September, 2023. In the circumstances, I do not propose to fault the Defendants for any defect in their evidence insofar as there may be any failure to respond to each and every allegation made in the proceedings. In any event, the case for the Defendants as set out in the affidavit of the second Defendant filed in opposition to the Claimants’ application may be summarized as follows:

- i. The Defendants take issue with every allegation of impropriety on their part, which they state has neither been properly particularized nor substantiated.
- ii. Owing to the large number of temples comprising financial and non-financial members, in 1990/1991 the Executive of the SDMS divided the country into regions, which each region being a Regional Council. Each Council has a Regional Coordinator who sits

on the Executive. It must be noted here that although this is stated to be a settled practice since 1990/1991, the Constitution of the SDMS was not amended to include this.

- iii. The rules for all Branches are set out in section 13²⁵ of the Constitution and the second clause 12 (12) (on page 37 of the Constitution) allows any member of the Executive to attend any meeting of a Branch and supervise any of their elections.

²⁵ Section 13 of the Constitution provides as follows:

“(a) Each Branch shall be named after the district within which it exists as “The Sanatan Dharma Maha Sabha of St. Joseph No. 1” Etc.

(b) Any branch of which the membership shall for a period one year fall below twenty-five, may be disbanded and its members transferred to the nearest Branch by the parent Body.

(c) Every Branch shall give effect at all times to the aims and objects of the Maha Sabha and carry out the directions of the Executive of the Maha Sabha.

(d) Every Branch shall be managed by a Committee of not less than five but not more than nine persons who shall be elected annually by members of the Branch.

(e) The Management Committee shall consist of a Chairman, Vice-Chairman, Treasurer and four Committee Members.

(f) Every Branch shall hold an Annual General Meeting on the last Sunday of march of each year at a time and place within the Branch, area to be fixed by the Branch Management Committee and to register the result with the Secretary General of the Maha Sabha within seven days and pay the annual contribution of five dollars (\$5.00)

(g) The business of the annual general meeting of a Branch shall be to receive and discuss the Report of the Branch Management Committee for that years and

(1) To elect officers for ensuing year

(2) To elect hour members from their Branch to attend conferences of the Parent Body

(3) To transact such other business of which the Secretary may be directed tie after time

(4) A copy of such report when adopted shall be forwarded to the Secretary General of the Maha Sabha within fourteen days of its adoption together with a list of the officers elected.

(h) The General Provisions of the constitution and standing orders of the Maha Sabha shall apply to all branches and no Branch shall enter, unless with the prior consent in writing of the “Executive”, into affiliation with or support any other organization.

(i) Except in the name of the Maha Sabha, no Branch or sub-committee shall have the power to hold property or collect funds, (other than subscription or donations from members) without the express authority of the Executive of the Maha Sabha in writing

(j) All cash in hand over the sum of five hundred dollars (500.00) shall be deposited within fourteen days in a recognized Bank in the name of the Branch of the Maha Sabha

(k) A full half yearly report of all activities and an audited Secretary General (sic) by each Branch Secretary

(l) All books of the Branches shall be available at all times to the President General, Secretary General, Trustees and Treasurer of a “Delegated Member of the Executive” for examination and their advice.”

- iv. In 1996, the SDMS (as set out on page 53 of the Management Handbook for SDMS Branch Operations) implemented a practice where the election of all officer of a Branch is conducted by an Officer representing the Executive of the SDMS and a copy of the election results is to be lodged with the Secretary General within 7 days of the election in accordance with section 13(f) of the Constitution.
- v. All registered Financial Branches are issued with a letter informing of the date of elections and inviting their nominations for the positions of President General and Secretary General. Each such Branch is also issued with 4 delegate cards which are required to be produced at the September Conference in order for the Branch delegates to be permitted to participate and vote.
- vi. The elections are not being held by the Defendants but are being held and overseen by an Election Steering Committee which is a settled practice of the SDMS, although no indication is given as to when that settled practice began. In any event, regarding that Committee and the conduct of the election the Defendants state that:
 - a. The March Conference for 2023 was held on April 23, 2023. All branches were permitted to attend regardless of status and no member of the Exchange Shiva Mandir attended.
 - b. On 5 July, 2023 the Executive passed a resolution to appoint an Elections Steering Committee to oversee the elections process. This Committee is meant to comprise impartial persons who were not contesting the elections and the individual members thereof were neither nominated by nor were related to the Defendants.

- c. The letter of 21 July, 2023 was sent to approved registered financial Branches advising of the date of the elections and advising them to ensure that their election has been held and reported to the Secretary General and to ensure that if they have nominees for the positions of President General and Secretary General, it reaches the office of the Secretary General no later than 16 August, 2023 for transmission to the election committee.
- d. Eighty-five (85) Branches submitted nominations through the Regional Coordinators all nominating the first Defendant for the Post of President General and the second Defendant for the Post of Secretary General. The only other nomination was submitted by letter dated 15 August, 2015, which purported to nominate PT Khemraj Vyas to contest the post of President General and PT Bhadase Seetahal Maraj (the other deponent for the Claimants) for the post of Secretary General. This was purportedly supported by nomination forms from ten (10) Mandirs, including the Exchange Shiva Mandir. The Steering Committee wrote to five (5) of the said Mandirs, including the Exchange Shiva Mandir, asking that they submit further information by 8 September, 2023, to prove that the said five (5) Mandirs were actually registered financial Branches. No responses were as yet sent to the Steering Committee.
- e. The first and second Defendants did not direct any Branches to nominate them as President General and Secretary General. Instead, Branches who indicated to the Executive that they wished to nominate the first and second Defendant as President General and Secretary General

were invited to submit their nominations using the template the first Claimant exhibits as "O". As such, the Defendants allege the transmission of this template was not any fraudulent attempt to influence the election.

f. The Defendants have not taken control of the election as the control and conduct of the election is in the hands of the Steering Committee and only delegates of registered financial Branches have been invited to vote.

g. The Defendants have not engaged in any vote padding and the purported WhatsApp message relied upon as evidence of the same is a message by the fourth Defendant to members of registered financial Branches reminding them of the date of the election and advising that the fourth Defendant has the relevant forms which must be completed by all Mandirs and inviting them to collect the same. It cannot be reasonably construed as any evidence of fraud.

h. There is no practice or constitutional requirement for the publication or distribution of any voters list and the Defendants have not sought to interfere with the list of persons entitled to vote.

i. The Claimants are not members of a registered financial Branch so as to be entitled to put forward any delegates or to vote in the election.

vii. In relation to the position of the first Defendant, as the lawfully appointed first Vice President, he lawfully acted in the position of President General under section 7(b) of the Constitution following the death of Pt Uttam Maharaj in 2018. At the next September Conference held on 15 September, 2019, although notice of that

Conference was transmitted to all branches, no written nominations had been made for the Post of President General in accordance with section 6(d). The first Defendant was nominated on the floor by the then Secretary General and seconded by Pt Capildeo Maharaj. No other nominations were made and all the delegates unanimously agreed to the appointment of the first Defendant as President General for the remainder of the term, which was to end in September, 2023.

- viii. In relation to the position of the second Defendant, at the time of the death of the Secretary General in 2019, the second Defendant was the first Assistant Secretary. He alleges that pursuant to clause 10(d), he acted as Secretary General in the absence of the late Secretary General. He further states that no General Conferences were held in September 2020 owing to the legal restriction on public gatherings owing to the COVID-19 pandemic. No Conferences were held in 2021 either owing to requests made from 84 out of the 121 district Branches to postpone the conferences owing to the transmissibility of the Delta variant of the COVID-19 disease. A notice of deferral of the September 2021 Conference was published in the newspaper on 26 September, 2021 (exhibited as “VM7” to the second Defendant’s affidavit). No Conferences were held in 2022 owing to the continued skepticism of branches as to public gatherings and the second Defendant allegedly continued in office pursuant to section 9(b) of the Constitution²⁶.
- ix. In relation to the fourth and fifth Defendants, the decision to disband and reconstitute the Pandits’ Parishad in 2017 was done with the agreement of the then President General, President of the

²⁶ Section 9(b) of the Constitution provides that: “The Executive Officers shall remain in office until their successors are elected.”

Pandits' Parishad and other senior Executive Members and ratified by the then Executive and by the 2017 Conference of Delegates. The recent 2023 elections were lawfully held under the scrutiny of the Elections Steering Committee in July instead of August to facilitate the availability of the Pundits and were conducted in accordance with section 14 of the Constitution.

12. I have considered the respective cases of the parties and I find as follows:

- i. There is no merit in the Claimant's claim that the election carded for 10 September, 2023 is being held in breach of the Constitution of the SDMS. There is no requirement for any two (2) tier process, for the appointment of a Returning Officer, for the occurrence of any election related matter to take place at the March Conference, for the publication of any list of Candidates, for the publication of any list of electors or precluding the appointment of an impartial Election Steering Committee made up of persons who are not themselves candidates in the election. It is clear that the Claimants wish to read into the Constitution provisions that do not simply exist.
- ii. I find that there is no indication that the procedure in section 17 and 18 of the Constitution, which is to be followed on the day of elections, will not be followed. Part of that procedure, indeed the first requirement of that procedure is that on the day of the election the first thing that must be done is an examination of the credentials of all the delegates to ensure that they are persons who are lawfully entitled to vote.
- iii. Additionally, I find that the Executive is entitled under the second section 12 (5) the Constitution (on page 36 thereof) to appoint "*any additional board or Committee for any purpose in keeping with the*

aims and objects of the Maha Sabha". This extremely broad power is more than capable of enabling the Executive to appoint an Election Steering Committee and, in my view, it cannot be argued that tasking independent persons, who are not themselves candidates in an election, with the conduct of that election is in any way an improper exercise of a discretion. Indeed, such a course can only strengthen the confidence of the membership in the electoral process. In any event, the Privy Council has long decided that where a body is entitled to act within its constitutional powers but its regulatory framework is silent as to precisely how those powers are to be exercised, it is entitled to determine how to proceed subject to its duty to act fairly²⁷. There is no doubt that the Executive is entitled to determine how the process leading up to the day of the election is to be conducted since none has been set out in the Constitution and Executive is required to ensure that the election is conducted.

- iv. In relation to the position of the first Defendant, I find that although no written nominations were made in accordance with section 6(d) in 2019, the post of President General, given its pivotal role in the SDMS, could not simply be left vacant and that the Conference of Delegates, described in section 6(a) as the Supreme Authority of the SDMS, was entitled to fill the position at the 2019 Conference. This is especially so since that body is the only body constitutionally entitled to elect a nominee to the position.
- v. In relation to the second Defendant, I find that although he has not been properly elected in accordance with section 7(c), I would decline to grant an interim injunction on this basis since he has been publicly acting in this role since 2019 without challenge and,

²⁷ Panday v JLSC PCA 33 of 2007 at paragraph 18.

as will be discussed below, the Claimants' undue delay in mounting a challenge is fatal to their application in this regard.

- vi. I also find that the Claimants have advanced no real evidence that would lead me to find that the elections of the Pandits' Parashad was unlawful and they have advanced no evidence whatsoever to suggest that at that election no delegates or representatives were elected. It would, in my view, require more than an implication from the letter of July, 2023 to find as a fact that no delegates or representatives were elected at that election especially since this is an election year and since the SDMS' inception, this has always been a requirement that needed to be fulfilled by the Pandits' Parishad. Further, the delay in challenging the 2017 disbanding is also fatal to their 99th hour application.
- vii. Finally, I find that the Claimants' spurious allegations of fraudulent conduct on the part of the Defendants is not made out on their evidence. Exhibit "N" is incapable of being construed as in any way fraudulent. Regarding exhibit "O", some weight could have been attached to this if the Defendants themselves were conducting the election instead of the independent Elections Steering Committee or if 85 Branches had not unanimously nominated the 1st and 2nd Defendants. In any event, the Claimants have adduced no affidavit evidence from any one stating that they were given this document by the Defendants and were directed to nominate the first and second Defendants. At the very least, evidence from even a single deponent is required before a finding as serious as fraud can be made.
- viii. In relation to the status of the Claimants as financial members, this will be dealt with below.

13. In the circumstances, I find that the case of the Claimants is not particularly strong and the balance of justice is certainly not weighted in their favor.

Locus Standi.

14. Section 4(a) of the Constitution provides that while all Sanatanist Hindus in the Territory are members of the SDMS, in order for a member to participate in the activities of the SDMS or hold office, he must be a registered member of a registered financial Branch of the SDMS. The Claimants allege they are such members. The Defendant allege they are not.

15. In support of the Claimants' allegation, they state the following:

- i.* Both Claimants are members of the Pandits' Parishad, the first Claimant since 1993 and the second Claimant since 2018.
- ii.* Both Claimants are registered financial members of Exchange Branch No. 35, although no evidence of the approval of the registration of the Branch as a registered Financial Branch, the payment of fees prior to the 2023 attempt or any Branch Reports were adduced into evidence.
- iii.* The first Claimant was appointed by the Executive of the SDMS to the Board of Directors of the SDMS Pandit Parasram School of Hinduism and the second Claimant was enrolled as a student of the said School. The first Claimant's appointment was revoked by letter dated 31 March, 2021.
- iv.* In 2014, the first Claimant discussed opening a branch of the SDMS at the Exchange Hindu Temple Complex which is not owned by the SDMS but by the first Claimant. The first Claimant was informed by the then Secretary General that the Executive approved the branch and allocated the Branch Number 35 to the Branch. In support the

first Claimant exhibits letter dated 25 July, 2016 as exhibit “F” to his affidavit. This letter is not an approval letter but is a letter to all members advising that the Parasaram School of Hinduism was now an Institution of the SDMS *“and is located at the Exchange Shiv Mandir which is the property of the SDMS with a designates Branch Number 35”*.

- v. The first Claimant also alleges that a number of functions were held at this Branch.
- vi. On 31 March, 2023, the Exchange Branch submitted a bundle of documents to the Secretary General which included the payment of the \$5.00 annual fee and the Annual Registration form. However, by letter dated 19 April, 2024 the second Defendant returned the documents advising that the records of the SDMS do not indicate that the Exchange Branch is a registered financial Branch. This, the Claimants state, is evidence that the second Defendant has wrongfully and fraudulently altered the records of the SDMS to deprive the Claimants of their rights to participate as financial members of the SDMS.

16. On the other hand, the Defendants state as follows:

- i. In order to become a Registered Financial Branch, the Branch must secure the approval of the Executive and pay the \$5.00 registration fee.
- ii. In order to remain on the Register of Branches, the Branch must pay the \$5.00 annual renewal fee and submit its Annual Report, list of officer and other information on the form approved by the Executive.
- iii. The Executive has a number of criteria that must be satisfied in order to obtain approval (although the only criteria listed in section

4(b) is that 25 or more Sanatanist Hindus organize themselves into a branch).

- iv. Each such Branch must comply with the requirements of section 13 of the Constitution, which sets out the requirements for holding Annual General Meetings, the election of officers, the making and submission of half yearly reports to the Secretary General et al.
 - v. Although the Exchange Mandir has been affiliated with the SDMS and given a branch number, there is no record of approval by the Executive as a registered Financial Branch nor is there any record of the branch having paid the initial registration fees or the annual renewal fees. Additionally, the Exchange Mandir has failed to hold annual elections or lodge the results of the same with the Secretary General, submit an annual branch registration form, list four (4) delegates to attend the annual Conferences of Delegates, submit any annual Branch reports or attend any annual March or September Conferences.
 - vi. The first time the Exchange Mandir ever attempted to pay a fee or submit a branch registration form was in 2023.
17. The Claimants argued that whether the Claimants were registered members of a Registered Financial Branch of the SDMS and therefore entitled to participate in the affairs of the SDMS so as to bring these proceedings is of no moment for the purposes of this application for urgent injunctive relief. In support, they cite the case of **Woodford v Smith (1970) 1 WLR 806**. However, in that case one of the applicants was an undisputed member, while the other applicant's membership was in dispute. In this present case, the membership of both applicants hinges on whether or not the Exchange Mandir is a Registered Financial Branch. If it is not, then

neither Claimant may participate in the affairs of the SDMS and will have no locus standi to bring these proceedings.

18. The evidence of both parties in this regard is peculiar. It is clear that the Exchange Mandir was given a branch number and there may have been some fluidity in the request for, and approval of, the Exchange Mandir as a Branch. No doubt, this fluidity seems to have occurred as a result of the desire at the time to formalize and house the Parasaram School of Hinduism. The letter of July 25, 2016 is also curious. The first Claimant maintains that the Exchange Temple Complex is owned, controlled, built and operated by him with no assistance whatsoever from the SDMS but the said letter states that the Complex is owned by the SDMS.
19. What is undisputed is that no registration fee, nor any annual fee was ever paid by the Exchange Branch between 2014 and 2022 so that even if they had been approved and registered, they would, by section 4(c), no longer have been kept on the Register of Branches.
20. Even more, the Exchange Branch has held no annual elections nor elected delegates, nor attended any Conference of Delegates between 2014 and 2019 when the last Conference was held and it appears that this is the first time the Branch has purported to pay a fee or submit a registration form. If it had been an approved branch in 2014, it clear the Branch was in repeated violation of the constitution and could no longer be on the Register in 2023. In the circumstances, it is unclear whether submitting a “renewal” would be sufficient to cure all of those breaches and defects.
21. In any event, in my view, this is irrelevant to the present application. As the Claimants have pointed out during the hearing, the Exchange Mandir/Branch is not a party to these proceedings. Further, it has taken no

action nor has it instituted any proceeding to challenge the determination of the SDMS that it is not a registered Financial Branch. In the circumstances, the Branch has, since April, 2023, accepted the determination of the SDMS that it is not a registered Financial Branch and, as a result, the Claimants cannot satisfy the requirements of section 4(a) of the Constitution and have no locus standi to bring these proceedings.

Delay.

22. The Defendants have argued that delay is likely to be held to be fatal to an application for an injunction where the applicant has waited to the 99th hour to seek injunctive relief. In support, they rely on the following authorities:

- i.* **Panday v Narad Sohan et al CV2019-01314** at paragraphs 30 and 31 where Mohammed J, citing a number of authorities, stated that it is settled law that a party seeking an injunction must move the court promptly else relief may be refused on the ground of unconscionable delay.
- ii.* **Injunctions by David Bean, 13th edn** at paragraph 26 where it is stated that “*delay is likely to be fatal where the claimant has waited until the eleventh hour before taking action*”.
- iii.* **Bunn v British Broadcasting Corporation and another [1998] 3 All ER** at page 557 J.
- iv.* **Amalgamation of Cable & Wireless (Barbados) Limited and CWB Ltd (CV 1779 of 2017)** at paragraph 83.
- v.* **Belize Alliance of Conservation Non-Governmental Organisations- v- Department of the Environment & Another Privy Council Appeal No. 47 of 2003** at paragraph 40.

vi. *AAH Pharmaceuticals Ltd & Ors -v- Pfizer Ltd & Anor [2007] EWHC 565 (Ch)* at paragraphs 45, 46, 76 and 77.

23. The crux of the learning is that where an applicant unduly delays before seeking relief with no real explanation for the delay, waiting last minute to mount a challenge which leaves the respondents with little time to properly respond to the application for relief that may cause catastrophic harm if granted, is a powerful reason to refuse to grant relief at all.

24. It is not disputed that the Claimants were well aware that an election was constitutionally due in September 2023 as an election must be held every 5 years. Their complaints regarding the offices of the first and second Defendants were known since 2018 and 2019, with no action being taken to challenge it and their complaints regarding the standing of the Exchange Branch was known since April, 2023 again with no action being taken to challenge it. Coming as they are now on the eve of the election is manifestly unjust, not only to the Defendants but to the SDMS and their members as a whole, who are entitled to conduct their constitutionally due election. The Conference of Delegates ought not to be disenfranchised by the Claimants at the last minute.

25. As such, even apart from the finding that the Claimant's had no locus standi to institute these proceedings, I would have refused relief on the ground of delay.

DISPOSITION:

26. In light of the forgoing this Court orders as follows:

(1) The Claimants' application for interim injunctive relief is dismissed.

(2) The Claimants' claim is dismissed, the Claimants having no locus standi to institute these proceedings.

(3) The Court will hear the parties on the issue of costs.

Dated this 7 day of September, 2023

**Karen Reid
Judge**