

IN THE FIJI COURT OF APPEALCivil Appeal No. 27 of 1986

Between:

DEO DUTT SHARMA s/o
Brahmadin

Appellant

- and -

FIJI MEDICAL ASSOCIATION

Respondent

Appellant in Person.
F.G. Keil for the Respondent.Date of Hearing: 8th July, 1986.Delivery of Judgment: 18th July, 1986.JUDGMENT OF THE COURT

Roper, J.A.

On the 1st June 1985 the Respondent Association held an extraordinary general meeting for the purpose of considering and adopting a new set of rules to replace earlier rules made in 1972. The Appellant, who is a highly qualified and senior member of the medical profession, was unable to attend the meeting because his membership of the Association had been suspended for three months from the 31st May for conduct which was alleged to be prejudicial to the best interests of the Association, but on the 12th July he received a copy of the new rules which are endorsed:-

"Rules of the Fiji Medical Association as ratified by an extraordinary general meeting of the Association held on 1st June, 1985 at Suva."

On the 26th July the Appellant issued proceedings against the Association by way of originating summons seeking a declaration that the new rules were "null and void", and an injunction restraining the Association from holding the 1985 election of office bearers pursuant to them. This relief was sought on the ground that no quorum of members was present. (Rule 18 of the 1972 rules provided for a quorum at extraordinary general meetings of at least twenty percent of the voting members or 20, whichever was the less).

In a supplementary affidavit filed on the 12th August the Appellant, pursuant to leave reserved, extended the grounds by alleging that two of the new rules (Rules 7 & 8), relating to membership qualification, were contrary to the express terms of the Act under which the Association was established, and so ultra vires. He further alleged that in fact the new rules had not been adopted at the 1st June meeting, there having been no motion to that effect nor any formal vote on the issue. Affidavits in reply were filed by the Secretary and Treasurer of the Association but they deal solely with the issue of whether there was a quorum.

On the 16th August, Cullinan J., decided that there was a conflict of evidence which could not be resolved on the affidavits and proceeded to hear evidence.

In his decision Cullinan J., while expressing himself to be "in some doubt" concluded that the Appellant had not met the onus upon him of proving that there had not been a quorum; and held that there had been a proper adoption of the rules. He upheld the Appellant's submission that

Rules 7 and 8 were ultra vires.

This is an appeal against the adverse findings. We find it unnecessary to consider the question of whether there was or was not a quorum and will limit our consideration to the "adoption" issue.

The minutes of the 1st June meeting were exhibited to the Appellant's first affidavit and they indicate that the only business discussed at the meeting was the proposed rules. After certain cosmetic and grammatical changes had been made to them the rules were thrown open for discussion. A number of amendments to the rules were then moved and voted on. The minutes then record:-

"The President thanked all the members present and reminded everybody to sign the little note attached which said that 'The F.M.A. Constitution 1972 is hereby revoked'"

The full text of "the little note" which eventually appeared as Rule 49 reads:-

"49. The Fiji Medical Association Constitution (1972) is hereby revoked save that any person appointed or elected to any office under that Constitution shall be deemed to have been appointed or elected under these Rules and any funds and accounts established under these Rules shall be deemed to be in continuation of the corresponding funds and accounts established under the revoked Constitution."

Cullinan J., found the "little note" something of a mystery, and so do we. There is no evidence as to what they were attached to, how many members signed them, or what happened to them after they were signed. In the course of his judgment Cullinan J., said:-

"I appreciate that the minutes before the Court are draft minutes, and must be confirmed at the Annual General Meeting. Nonetheless it was not advanced by any witness that a formal motion in the matter had been passed at the Meeting."

We were informed from the Bar that when the minutes were confirmed at the annual general meeting the only addition to them was a statement to the effect that there had been no quorum "for a short time".

Cullinan J., expressed himself satisfied that the rules had been properly adopted by the meeting in these words:-

"... I can only regard the minutes in their totality therefore as a record of adoption by the meeting of draft new Rules for the Association, that is, as amended by the meeting, and of revocation of the existing Rules: indeed the last of the new Rules, Rule 49, is couched in exactly the same terms as the document circulated to the members at the close of the meeting, reproduced above."

The only evidence bearing on the question of adoption came from the Association's President and it reads:-

"As to Exhibit B I asked everyone if they are in favour of change of Rules. They said yes. I asked if there was any objection there was none and I asked them to sign Exhibit B and retain for them to keep."

(Exhibit B was "the little note" referred to in the minutes).

The 1972 Rules, which governed the 1st June meeting, provided for voting by a show of hands with a secret ballot if demanded by 15 or more voting members.

The validity of voting rests on compliance with the rules governing voting and in the present case no motion was put and there was no vote pursuant to the Association's rules.

We are satisfied that the appeal must be allowed, and there will be a declaration that the purported adoption of the rules at the meeting of the 1st June, 1985 was invalid.

The Appellant is awarded his disbursements on the appeal hearing to be fixed by the Registrar.

[Handwritten Signature]

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Vice President

[Handwritten Signature]

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Judge of Appeal

[Handwritten Signature]

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Judge of Appeal