

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 114 of 2019

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

PLAINTIFF

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

2nd DEFENDANTS

Counsel : Applicant: Mr Nandan. S
Plaintiff: Mr Singh. K
: Respondents: Mr Sharma. T

Date of Hearing : 13th May, 2019 at 9.30am

Date of Ruling : 13th May, 2019 at 4.00pm

RULING

(Addition of Defendants)

INTRODUCTION

1. This is an action filed by way of originating summons seeking validity of a decision taken by National Executive Council (NEC) of an unincorporated religious body, in terms of its constitution. The impugned decision was not to allow members of parliament to contest in election for positions in NEC. Along with the originating summons an order for injunction was sought preventing election being held till determination of this matter. In terms of Section 2 of Religious Bodies Registration Act 1881, all suits against religious bodies should be instituted against trustees of such religious bodies and Plaintiff

complied with that. After grant of the interim injunction, members of NEC filed an application seeking they be added as Defendants to this action. This application is made in terms of Order 15 rule 6(2) (b) (i) and (ii) of the High Court Rules of 1988. Plaintiff oppose the application to add members of NEC of religious body as a Defendants, but conceded that they can swear an affidavit as to the facts relating to that decision and the same can be filed in this action. Plaintiff object to they being made a party.

ANALYSIS

2. Originating summons sought following orders:

- a. *An Order allowing the Plaintiff to be nominated and stand in the 2019 National Election for a position in the National Executive Council of the Shree Sanatan Dharam Pratinidhi Sabha of Fiji scheduled for the 19th April, 2019.*
- b. *A Declaration that the letter dated 15th March, 2019 issued by the 1st Defendant is unconstitutional under the Shree Sanatan Dharam Pratinidhi Sabha of Fiji Constitution.*
- c. *A Declaration stating that the Shree Sanatan Dharam Pratinidhi Sabha of Fiji Constitution does not restrict members of Parliament to be nominated and appointed to a position in the National Executive Council.*
- d. *An order that the National Election for the National Executive Council of the Shree Sanatan Dharam Pratinidhi Sabha of Fiji scheduled for the 19th April, 2019 be put stayed until the determination of this matter.*

3. Plaintiff along with the originating summons file an *ex parte* summons seeking interim injunctions restraining holding of elections for NEC.

4. In the originating summons 1st Defendant was a member of NEC, but Plaintiff sought to strike out 1st Defendant and proceeded only against 2nd Defendant who are trustees of the religious body. So the action proceeded only against trustees of the religious body. In terms of law Plaintiff could proceed against trustees of that religious body.

5. Section 2 of Religious Bodies Registration Act 1881 states:

" All suits and proceedings at law instituted or brought by or against any religious body shall be instituted or brought by or against the persons registered as hereinafter provided as trustees for the time being of such religious body and any such suit or proceeding shall be carried to its final termination notwithstanding any alteration in the registered trustees of such religious body while such suit or proceeding is pending" (emphasis added)

6. So Plaintiff who is challenging a decision taken by NEC of religious body and an injunction restraining to hold elections of the members in NEC of the religious body had complied with section 2 of Religious Bodies Registration Act 1881.

7. Members of NEC, in the amended notice of motion file on 2.5.2019 sought they be added as Defendants in terms of Order 15 rule 6 (2)(b)(i)and(ii) of High Court Rules of 1988.

Order 15 rule 6(2) (b) states:

(2) *Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application –*

(a) *order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;*

(b) *order any of the following persons to be added as a party, namely-*

(i) *any person who ought to have joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or*

(ii) *any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter. (emphasis is added)*

8. In the affidavit in support of the application in terms of Order 15 rule 6(2)(b) of the High Court Rules of 1988, it is stated that the impugned decision was taken by members of NEC and they are the persons who have knowledge about the said decision hence they should be allowed to add to the action as Defendants.

9. Counsel for the members of NEC also said that they are necessary parties to this action and they should be added on that basis.

10. Counsel for Plaintiff said that the scope of Order 15 rule 6(2)(b) of the High Court Rules of 1988, is broad and when it relates to a religious body only parties that needs to be defendants to an action are trustees in terms of Section 2 of Religious Bodies Registration Act 1881. I do not agree with that contention.

11. Order 15 rule 6(2)(b) grants the court a wide discretion. The court can *ex mero motu* add a necessary party or in the opinion of court think just and convenient to add, to an action at any time of the proceedings.
12. The rationale behind that is to resolve the dispute between the parties, in a just and convenient manner. This is equally applicable for proper case management, too. Instead of plethora of cases being instituted, if in a one case all the necessary issues can be dealt it should be encouraged, as it would save time of the court as well as time and money of litigants, while adhering to rules of natural justice.
13. A curable defect in the pleading can also be cured under said provision without dismissing the entire action on technicality. So, overall justice and prejudice to other parties can be considered in the exercise of broad discretion given to the court.
14. In my mind Order 15 rule 6(2)(b)(ii) of High Court Rules of 1988, allows a party to be added to an action if the court thinks that such addition would conveniently adjudicate the issue between the parties already before court and the proposed parties. Discretion granted to court in terms of the said provision is wider than considering a party is necessary for the determination of the issue, as argued by counsel for NEC.
15. The Supreme Court Practice (White Book) (1988) p180 at 15/6/1 deals with Scope of rule and states:

" This rule , however has not altered the legal principles with regard to parties to actions and in now way qulifieds the necessity for having before the Court the proper parties necessary for determining the point at issue (Kendall v Hamilton; Att-Gen. v. Pontypridd Waterworks Co [1908] 1 Ch 388 ; Norbury v Griffiths [1918] 2 K.B 369, C.A.; Performing Rights Society v London Theatre of Varieties [1924] A.C.1).

The Court retains a discretionary power to refuse the order (Lancaster Banking Co v Cooper (1879) 9 Ch.D. 594; Roberts v Holland [1893] 1 Q.B. 665) and may elect to deal with the matter as regards the rights of the parties before it , specially if the action has proceeded to trial without objection as to parties (Re Harrison [1891] 2 Ch. 349; Hall v Heward (1886) 32 Ch.D. 430) The power given by the rule is, however widely exercised(Wilson v.Balcarres [1893] 1 Q.B. 422C.A; Robinson v Geisel [1894] 2 Q.B. 688) though the addition of new patties may cause new expense and necessitate new evidence(Byrne v Brown (1889)22 Q.B.D. 666, where a third party objected); but if serious embarrassment would be caused to the plaintiff the order may be refused(see The Germanic [1896] P.84; McCheane v Gyles (No2)[1902] 1 Ch. 917; Norris v Beazley (1877) 2 C.P.D 84; Moser v Marsden [1892] 1Ch 487; Re Dracup [1892] W.N. 43). But, generally speaking, the Court will make all such changes in respect of parties as may be necessary to enable an effectual adjudication to be made concerning all matters

in dispute (Mc Cheaney Gyles; Van Gelderv Sowerby Bride (1890) 44 Ch.D.374; Montgomery v Foy [1895] 2 QB 321; Bennetts v Mc Ilwratith [1896] 2 QB 464....."

16. In the originating summons Plaintiff is seeking to challenge decision taken by NEC. Plaintiff, had initially thought to name one member of NEC as the 1st Defendant. For reason best known, at the hearing Plaintiff's counsel sought to strike out the 1st Defendant from action. May be, that he thought he had complies with Section 2 of Religious Bodies Registration Act 1881, and there was no need to add even one members of NEC to this action.
17. At the hearing counsel for Plaintiff sought an interpretation that would restrict the scope of Order 15 rule 6(2) of High Court Rules of 1988 when the Defendant is a religious body in terms of Section 2 of Religious Bodies Registration Act 1881. I do not agree with that interpretation. Section 2 of Religious Bodies Registration Act 1881 only stipulate minimum requirement and it does not restrict addition of parties who are necessary for proper adjudication of the matter before the court.
18. The discretion of the court granted in Order 15 rule 6(2)(b)(ii) is broader than addition of necessary party as stipulated in Order 15 rule 6(2)(b)(i) of High Court Rules of 1988. If in the opinion of the court a party should be added for convenience for determining issue before court such party can be ordered to be added even without an application. This is a low threshold, than a party that is necessary or ought to have added. It is granted to Court to administer justice conveniently and just manner.
19. In my opinion if members of NEC are needed to this action it would not cause any embarrassment to Plaintiff. In contrary it would prevent plethora of litigation relating to this decision of NEC preventing a member of parliament to contest in election to members of NEC. It is the members of NEC that had taken this decision and it seems they are the best to defend their decision. Trustees of the religious body in this action had not taken much interest and dis not even filed affidavit in opposition. This application was made without delay.
20. Counsel for Plaintiff said members of NEC had expired and it had happened after they have taken this decision. If so, that should not prevent them from adding as parties but support this application. The members who took the decision are in the best position to explain and defend it apart from the trustees who are legally required to be added. Without trustees being made a party the action could not have proceeded for lack of compliance, but apart from trustees any other party can be added in the opinion of the court, for administration of justice.
21. The conduct of trustees who are second defendant to this action is also relevant. They had not filed even an affidavit in opposition. This leaves an important issue as to the

eligibility of members of NEC being determined without proper ventilation. If the present conduct of trustees continued there is likelihood of no opposition to the decision taken by religious body in this matter. Members of NEC who made the decision should not be prevented from making an affidavit and or submission explaining their position. Once they are added to the action as Defendants they can seek any appropriate legal advice and act accordingly as a party to this action.

CONCLUSION

22. The trustees of religious body are not the only parties for proper adjudication of matters before the court. There is no restriction in Section 2 of Religious Bodies Registration Act 1881 restricting the scope of Order 15 rule 6 (2) (b) of High Court Rules of 1988. Application to add the members of NEC that made impugned decision is allowed. Cost of this application is cost in the cause.

FINAL ORDER

- a. Application for addition of members of NEC that made impugned decision, stated in the amended motion is allowed. They are granted 14 days to file affidavit in opposition to originating summons.
- b. Cost of this this application is cost in the cause.

Dated at Suva this 13th day of May, 2019.



Deepthi Amaratunga
Justice Deepthi Amaratunga
High Court, Suva