

MEMORANDUM

SUPREME COURT: QUEENS COUNTY
IA PART 14

VASANTRAI M. GANDHI, et al.	x	INDEX NO. 16860/07
-against-		MOTION CAL. NO. 1
UMA MYSOREKAR, et al.		BY: ELLIOT, J.
		DATED: DECEMBER 18, 2007

x

In this Article 78 proceeding, Vasantraï M. Gandhi, Dulal Pal, Kettingeri V. Rao, T.K. Sreepada Rao, Sunkara Apparao, Malladi Nirmala Shastri, Sambasiva Rao Venigalla, Anand Mohan, Venkaiah Dama, Nehru E. Cherukupalli, and Krishnamurty Aiyer seek a judgment declaring (1) that petitioners continue to be members of respondent Hindu Temple Society of North America, Inc. and that the individual respondents have no right, power or authority to divest petitioners of such membership rights; (2) that the Society must be managed and administered in accordance with the bylaws of 1970, which may be amended only in accordance with the procedures prescribed in Article IX of the Religious Corporation Law; (3) that four (4) of the individual respondents are no longer members of the Board of Trustees, their identity to be decided by lot, as provided for in the bylaws; (4) appointing a Referee to conduct a General Body meeting of the members, and at such meeting to conduct elections to the Managing Committee, President and other offices as provided in the 1970 bylaws, including four (4) members of the

Board of Trustees, and thereafter directing such elected persons to take charge of their respective offices; (5) prohibiting the individual respondents from conducting the day-to-day operations of the Society, from discharging the functions of President and/or Treasurer, and from discharging the functions of the Society in any capacity unless they are duly elected as provided for in the 1970 bylaws.

Background:

In a proceeding to remove the members of the Board of Trustees, commenced in 2001 and marked by protracted litigation, the Appellate Division, Second Department, determined that the respondent Hindu Temple Society of North America (Hindu Society) had adopted bylaws in 1970, which provided for the election of trustees by the members of the Hindu Society; that the Hindu Society had failed to hold elections as required under the bylaws; that the Hindu Society had neither amended nor repealed the 1970 bylaws, as the bylaws specifically required that any proposed amendments thereto be circulated in advance of a meeting of the Society's members, and be approved by a two-thirds vote of the members. The court therein determined that since the adoption of the 1970 bylaws, the Board of Trustees, acting alone, purported to adopt and amend subsequent by-laws beginning in 1978 and continuing through 2002. There was no evidence that the required procedures

for amending the bylaws were ever followed, and in fact Hindu Society's members never voted on the amendments. The court, therefore, voided the post-1970 bylaws. The court also determined that under the 1970 bylaws election to the Board required a simple majority of votes from eligible members, and as there was no evidence that any of the then current Trustees was legally elected to his or her post, those Trustees acquired no legal right to such offices, and that their performance of functions of the offices was a nullity. The Appellate Division remanded the proceeding to the Supreme Court, for the appointment of a Referee to direct and oversee a reorganizational meeting of the Society for the purpose of electing a new Board of Trustees (see Matter of Venigalla v Alagappan, 307 AD2d 1041 [2003]).

A Referee was appointed pursuant to an order dated October 23, 2003. The Referee appointed a Managing Committee who in turn approved the membership form and invited devotees to apply for membership . The Referee and Managing Committee reviewed all of the applications for membership, and determined that there were approximately 8,000 individuals who had met the requirements for membership and had paid their dues by the end of 2004. Due to the protracted motion practice, the election did not occur until January 13, 2006, at which time over 4,000 members voted in the election for a new 11-member Board of Trustees. Some 210 people had competed for the seats on the Board of Trustees. The Referee

submitted his report to the court on March 10, 2006, and in an order dated March 23, 2006, the court decreed, among other things, that Uma Mysorekar, Reddy D. Gaddam (Gaddam D. Reddy), Raja Gopal Iyer, Subramaniam Sundararaman, Siamamba Veeramachaneni, Shivakumar Prabhat, Sekhar Viswanathan, Jaya Sivamurthy, Haresh Sajnani, Lakshesh Panchal, and Hyma Reddy were duly elected Trustees of the Hindu Society and they were directed to assume their duties immediately upon the signing of the judgment. The elected Trustees were the same individuals who had previously been serving as Trustees, albeit without being properly elected to their positions, and they are the respondents in the within proceeding.

The Appellate Division, in an order dated June 19, 2007, among other things, denied that branch of the elected Trustees' motion for an order rejecting the interim report of the court-appointed Referee, and upheld that portion of the order which directed that the newly-elected Trustees of the Hindu Society assume their duties upon the signing of the judgment in that proceeding. It is noted that one of the issues raised on appeal by the newly-elected Trustees was that the Hindu Society is a free church formed pursuant to Article 9 of the Religious Corporation Law, and, therefore, has no members and is not required to hold elections to the Board of Trustees. The Appellate Division, however, stated that its previous findings constitute the law of the case, and could not be challenged on this appeal inasmuch as

such a challenge could have been raised on the prior appeal, but was not (Matter of Venigalla v Nori, 41 AD3d 725 [June 19, 2007]).

The Current Petition:

Petitioners Vasantrai M. Gandhi, Dulal Pal, Kettingeri V. Rao, T.K. Sreepada Rao, Sunkara Apparao, Malladi Nirmala Shastri, Sambasiva Rao Venigalla, Anand Mohan, Venkaiah Dama, Nehru E. Cherukupalli, and Krishnamurty Aiyer each state in their affidavits that they are members of the Hindu Society and that they continued to be members in 2006. Petitioners each state that in 2004, in response to the Referee's letter, they applied for membership and tendered their dues to the Hindu Society, and that they voted in the court-supervised election. Petitioners further state that they believed that their annual membership was valid through the end of 2006. Petitioner Aiyer states in his affidavit that shortly after judgment was entered in the prior action, he tendered his renewal dues at the office of the Hindu Society, at which time the clerk refused to accept his check, claiming that he had no instructions from the respondents. Mr. Aiyer states that no notice of the April and May 2006 meetings was ever posted on the Hindu Society's notice board or website and that he subsequently learned of the two meetings which stripped all 8,000 members of their membership rights. Petitioner Dama states in his affidavit that he sought to renew his membership on April 25, 2006, and later in May 2006, and

that the Hindu Society's staff refused to accept his renewal check and that he was not provided with notice of the April and May 2006 meetings to amend the bylaws. Petitioner Venigalla states in his affidavit that on July 4, 2006 he tendered his renewal dues to the Hindu Society's staff who refused to accept his dues. Petitioner Cherukupalli similarly states in his affidavit that in response to the Referee's letter, he, his wife and their children all applied for membership and their dues were accepted in 2004; that they voted in the court-supervised election; that he believed that they were members for the year 2006; that he never received notice of the April and May 2006 meetings; and that his checks for the renewal dues tendered in August 2006 were returned with a letter stating that as the bylaws had been amended in May 2006, there was no membership in the Hindu Society. Petitioner Gandhi states in his affidavit that in response to the Referee's letter, he became a dues-paying member of the Hindu Society; that he voted in the election in 2006 and believed that he was a member for the year 2006; and that he never received notice of the April and May meetings. Affidavits have also been submitted by several non-parties who state that they are members of the Hindu Society, that they participated in the court-supervised election and that they did not receive notice of the April and May 2006 meetings. Some of these individuals stated that although they tendered renewal dues, the Hindu Society refused to accept the same, while

others state that they believed that their membership was for the entire 2006 year. In addition, numerous "petitions" have been submitted by individuals who did not join the Hindu Society, as they wished to avoid any involvement in the prior litigation, but were interested in becoming members once the election was held and the legal issues were resolved.

Petitioners assert that having failed to prevail on its claims in the prior litigation, the newly-elected Board of Trustees sought to repeal the 1970 bylaws in its entirety and replace it with the amended bylaws, which abolished all categories of membership, abolished the members' voting rights, and put in place a self-perpetuating Board of Trustees, invested with supreme policy making powers, including the selection, rather than election, of the Hindu Society's officers. It is asserted that in order to achieve this result, the respondents unilaterally terminated memberships, or refused to recognize them and others as members, refused to permit the Hindu Society to accept members' renewal dues, and failed to provide proper notice, as required under the 1970 bylaws, of the General Body meetings of April 27, 2006 and May 12, 2006. It is asserted that the failure to give the members proper notice of the General Body meeting of April 27, 2006 which was attended by 29 members for the purpose of proposing new bylaws, and the General Body meeting of May 12, 2006, at which the new

bylaws were adopted by 93 members, as required by the 1970 bylaws, renders the new bylaws null and void.

Petitioners further state that on June 20, 2007, they sent a fax to the Trustees, demanding that they hold an election to the Managing Committee and other posts required by the 1970 bylaws. Petitioners also assert that pursuant to the provisions of the 1970 bylaws, four members of the Trustees are required to step down, and that the identity of these four members are to be selected by lot. Finally, petitioners assert that as the Trustees continue to act in derogation of the 1970 bylaws and the prior orders of the court and the Appellate Division, a Referee should be appointed to conduct a General Body meeting and elections to the Managing Committee in accordance with the bylaws.

Respondents, in opposition, assert that the petition should be denied, as the Hindu Society adopted a new set of bylaws in 2006, and, therefore, the 1970 bylaws are no longer applicable. It is asserted that on April 11, 2006 the Board of Trustees distributed a notice to all Hindu Society members in good standing who had paid their annual dues that an Extraordinary Meeting of the General Body had been scheduled for April 27, 2006, for the purpose of amending the bylaws; that 29 members attended the April 27, 2006 meeting, and that fewer than 100 devotees had acted to renew their annual membership; that the proposed bylaws and amendments were read aloud at the meeting, and a resolution was approved to adopt

the proposed bylaws and present them at a further special meeting of the General Body to be held on May 12, 2006; that on April 27, 2006 a notice for the second Special Meeting was distributed to the annual members of the Hindu Society; that the proposed amended and new bylaws were attached to said notice; and that the proposed new and amended bylaws were approved and adopted by a unanimous vote by the annual members at the May 12, 2006 meeting. Respondents, thus, assert that petitioners are not entitled to the relief sought, as the 1970 bylaws are no longer in effect. Respondents further assert that since its inception in 1970, the Hindu Society was incorporated as a free church under the provisions of Article 9 of the Religious Corporation Law, and that it has opted for a self-perpetuating Board of Trustees. It is asserted that in the prior litigation, the Appellate Division never considered whether the provisions of the 1970 bylaws, including the provision for the election of trustees by its members, is unenforceable because they are in conflict with the provisions of Article 9. Respondents further assert that petitioners lack standing to maintain this proceeding, in that as a free church, the Hindu Temple only has devotees who do not have the obligation or right to object or challenge the manner in which the services and religious functions are provided.

At the outset, it is noted that although the Court of Appeals granted respondents leave to appeal the

Appellate Division's order of June 19, 2007 (Matter of Venigalla v Nori, supra, lv to appeal granted 2007 NY LEXIS 3704 [November 27, 2007]), that order has not been stayed. Therefore, the court declines to hold this proceeding in abeyance pending a determination of said appeal.

Respondents' claim that the petitioners lack standing to maintain this proceeding is rejected. The issue of membership and voting rights was necessarily decided in Matter of Venigalla v Alagappan and Matter of Venigalla v Nori. Respondents, thus, are collaterally estopped from relitigating this issue here. Respondents' claim that the 1970 bylaws are in conflict with Article 9 of the Religious Corporation Law, and, therefore, the 1970 bylaws are inapplicable, is also rejected. The Appellate Division in Matter of Venigalla v Nori held that its findings regarding the 1970 bylaws constituted law of the case. Respondents, therefore, are bound by the Appellate Division's determination and cannot relitigate that issue here.

The 1970 bylaws provide that membership in the Hindu Society remains "in force until such membership is voluntarily discontinued, or the dues are not met." Although respondents claim that the 8,000 members who were eligible to vote in 2004 dwindled to fewer than 100 members by April 27, 2006, there is no evidence that respondents maintained a membership list, sent dues renewal notices to its members, continued to collect dues

after the January 13, 2006 election, or gave members an opportunity to renew their memberships on a yearly basis. Due to the protracted nature of the prior litigation, it does not appear that individuals who joined the Hindu Society and paid dues in 2004 were required to pay renewal dues in order to participate in the January 13, 2006 election. Thus, as the members were permitted to participate in said election, petitioners' assumption that they continued to be dues-paying members throughout 2006 is not unreasonable. Respondents' refusal to recognize petitioners as members of the Hindu Society and accept their renewal dues, was improper and violated the 1970 bylaws.

The General Body of the Hindu Society, consisting of dues-paying members, has the right to amend its bylaws, provided that the procedures set forth in the 1970 bylaws are observed. Article III, Section 9 of the 1970 bylaws provides that for elections to the Board of Trustees and to the Managing Committee, as well as for "changes, alterations or amendments to the by laws," in addition to the votes of those present at the General Body meeting, "absentee ballots from duly qualified members, and duly authorized votes or written opinions will be accepted." Article IV Section 1 provides that "[t]he General Body will be composed of all members in good standing who have paid their annual dues." Section 2 provides, in pertinent part, that "[t]he members of the General Body shall elect members of the Board of Trustees, members

of the Managing Committee, members of the Auditing Committee, adopt or ratify the bylaws and decide upon the questions referred to them. They will approve the financial and audit reports." Section 7 provides that "[i]n special cases, if warranted by extraordinary circumstances, the Board of Trustees or the Managing Committee may call a meeting, giving at least fifteen days notice, to discuss important issues."

Article VI Section 1 of the 1970 bylaws provides that "[t]he Managing Committee is the executive arm of the Board of Trustees. It will be a representative body having a President, three Vice-Presidents, of whom two will be honorary and co-opted by the Board of Trustees, a Secretary, a Treasurer and twelve members, of whom five will be co-opted ex-officio representatives of existing cultural and religious organizations in the New York area." Section 2 provides that "[t]he President and other members of the Managing Committee will be elected by the General Body at its annual meeting and confirmed by the Board of Trustees. Members of the Managing Committee shall hold office for a period of three years or as otherwise specified. One third of the Managing Committee will be renewed each year. Members of the Committee may offer themselves for re-election."

Respondent Uma Mysorekar, as "President for the Board of Trustees" issued a "NOTICE OF EXTRAORDINARY MEETING OF THE GENERAL BODY" dated April 11, 2006, stating that "Pursuant to

Article IV Section 7 of the 1970 Bylaws, the Board of Trustees has scheduled an Extraordinary Meeting of the General Body on April 27, 2006 at 7:00 PM in the Temple Office Meeting Room. The purpose of this meeting will be to propose amendments to the Bylaws." It is noted that the 1970 bylaws only provide for two offices for the Board of Trustees, the Chairman and the Secretary, who is also the Secretary of the Managing Committee. Respondent Uma Mysorekar states in her affidavit that she is the President of the Hindu Society, but fails to state when she was elected to that office. Although the Board of Trustees were elected by the General Body on January 13, 2006, neither the Managing Committee, nor the President were elected at that time, and no further elections have been held. Therefore, as it does not appear that Ms. Mysorekar was elected by the General Body to the position of President, she lacks the authority to act in that capacity.

The Board of Trustees, however, pursuant to Article IV Section 7 of the bylaws was entitled to call a special meeting of the General Body in order to discuss amending the bylaws. Clearly the fact that the respondents failed to succeed in the prior proceedings does not constitute "extraordinary circumstances," as the term is ordinarily understood. Nonetheless, it is undisputed that amending the bylaws is an "important issue," which triggers the applicable notice provisions.

Respondents state that on April 11, 2006, the Board of Trustees "caused the distribution of a notice to all Temple members in good standing." Respondents, however, do not state in what manner this notice was distributed, or to whom it was distributed. In view of the fact that there were 8,000 members eligible to vote in the January 16, 2006 election, that at least 4,000 members cast ballots, and as respondents refused to permit some of the petitioners from paying their dues prior to the April and May 2006 meetings, thereby disenfranchising them without cause, the court finds that the dissemination of the April 11, 2006 notice was invalid and that the adoption of new bylaws on May 12, 2006, is void.

Finally, petitioners are correct that as there had been no elected Board of Trustees until January 16, 2006. Article V Section 1 of the bylaws, requires that "[i]n the first year four trustees, decided by lot or by voluntary resignation, will offer themselves for re-election." However, the court finds that as the bylaws do not require the immediate resignation of the four trustees, all of the members of the Board of Trustees may continue in their post until a new election is held.

In view of the foregoing, the petition is granted to the extent that it is the declaration of the court that petitioners are all members of the Hindu Society, and that respondents are required to accept the tender of petitioners' renewal dues. The petition is

further granted to the extent that it is the declaration of the court that the Hindu Society must be managed and administered in accordance with the bylaws of 1970, which may be amended only in accordance with the procedures prescribed in the 1970 bylaws and that, pursuant to the bylaws, four (4) of the individual respondents are required to resign, either voluntarily or by lot, from the Board of Trustees, but may remain in office until a new election is held. Petitioners' request to appoint a referee to conduct a General Body meeting of the members and to conduct elections to the Managing Committee, President and other officers at said meeting, is denied. Petitioners' request to enjoin the individual respondents from conducting the day-to-day operations of the Hindu Society, from discharging the functions of President and/or Treasurer, and from discharging the functions of the Society in any capacity unless they are duly elected as provided for in the 1970 bylaws, is denied. Although said functions are to be performed by the Managing Committee as provided for in the bylaws, it is necessary that said functions be performed until such time as a Managing Committee is elected by the General Body. In the interim, within 90 days from the service of a copy of the order to be entered hereon, respondents are directed to notify all members who were eligible to vote in the January 16, 2006 election of their right to renew their membership and to tender their dues on an annual basis, which shall be accepted by the Hindu Society, and to

accept new applications for membership and the tender of dues by new members, and at the end of said 90 day period, respondents are directed to provide proper written notice, to all members of the Hindu Society, of a General Body meeting for the purpose of electing a Managing Committee, President and other officers as set forth in the 1970 bylaws.

Settle order.

J.S.C.