

Matter of Venigalla v Nori
2008 NY Slip Op 05956 [11 NY3d 55]
July 1, 2008
Smith, J.

Court of Appeals

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In the Matter of Sambasiva Rao Venigalla et al., Respondents,
v
Dattatreyudu Nori et al., Appellants. Attorney General of State of New York, Intervenor.

Argued May 28, 2008; decided July 1, 2008

Matter of Venigalla v Nori, 41 AD3d 725, reversed.

{**11 NY3d at 59} OPINION OF THE COURT

Smith, J.

The Hindu Temple Society of North America was incorporated in 1970 under article 9 of the Religious Corporations Law. In the same year, it adopted bylaws calling for the [*2]members of the Society to elect its trustees. Those bylaws were never implemented, and were forgotten until 2001, when petitioners rediscovered them and demanded that the prescribed elections take place. The Appellate Division upheld petitioners' demand.

We hold that the Appellate Division erred for two reasons: the requirement of elections for trustees is inconsistent with the Religious Corporations Law, and therefore invalid; and, in any event, the 1970 bylaws had been abandoned by 2001.

I

The Society's certificate of incorporation was filed with the Department of State on February 17, 1970. It says that the Society is organized "[p]ursuant to Article 9 of the Religious Corporations Law." The certificate names seven trustees. On May 21, 1970, the Society applied to the Internal Revenue Service (IRS) for a tax exemption, attaching to its application a set of bylaws. The Appellate Division found that these bylaws were adopted by the Society in 1970, and we accept that finding as supported by the record.

The 1970 bylaws define the "General Body" as "all members in good standing who have paid their annual dues" and provide that "[t]he members of the General Body shall elect members of the Board of Trustees" for three-year terms, at meetings to be held annually. The 1970 bylaws also provide that they can be amended only by a vote of the General Body. So far as the record shows, however, neither these provisions nor any others in{**11 NY3d at 60} the 1970 bylaws were ever implemented, from May 21, 1970 until after the commencement of this proceeding in 2001. During that time, no one connected with the Society, so far as the record shows, ever

mentioned the 1970 bylaws or appeared to be aware of their existence.

From the inception of the Society, it was in fact governed by a self-perpetuating board of trustees. The trustees named in the certificate of incorporation added others to their number, and when vacancies later occurred they were filled by a vote of the board. A memorandum prepared in 1975 describes the "Interim Organizational Structure" of the Society, making no reference to the 1970 bylaws and containing no provision for election of trustees by members. A 1977 report, directed at devising a "more permanent framework," says: "It is most fortunate that the society did not adopt the recognized methods of cultural societies with annual elections, change of officers etc." In 1978, the board adopted new bylaws that said "[t]he Board of Trustees will exercise the function of final selection and appointment" of its own membership. The Society operated under the 1978 bylaws, as amended by the trustees from time to time, until after this dispute arose; none of the amendments disturbed the board's power of "final selection and appointment." There is no record that anyone, before the 21st century, expressed any doubt that the 1978 bylaws were validly adopted.

The belief of the Society's leadership that the Society should and did have a self-perpetuating, not an elected, board was not kept secret. An article entitled "Building Temples or Community Centres in Modern Times," written in 1977 by one of the Society's founders, held up [3]the Society's temple as a model. The article warned that "it will be self-defeating" if a temple "is organised as a cultural society with annual elections [and] continuous change in officials High level people will not join if they have to stand for elections. Decision-making with clear-cut responsibility are [sic] difficult if subjected to general body meetings." In a letter written many years later, after this litigation had begun, one of the petitioners in this case conceded—unhappily, and in provocative terms—the reality that had long existed: "The temple was managed in a totalitarian form from the very beginning."

Petitioners, members of the Society who disagreed with certain actions of its management, began this proceeding in {**11 NY3d at 61} 2001. The petition makes no mention of the 1970 bylaws, though it does assert that the Society's members have "a valid right to participate in the governance" of the Society. The petition, relying on various provisions of the Not-For-Profit Corporation Law, sought removal of the board of trustees, appointment of a receiver, and other relief. While the case was pending before Supreme Court, petitioners discovered the 1970 bylaws and submitted them to the court as an alternative ground for the relief they sought.

In 2002, Supreme Court granted petitioners certain relief, but refused to dissolve the board or appoint a receiver. Supreme Court treated the bylaws adopted in 1978 and thereafter as valid amendments to the 1970 bylaws. Petitioners appealed. The Appellate Division, in a 2003 order, found "no evidence in the record that the required procedures were ever followed to amend the 1970 bylaws" and held that "Supreme Court should have voided the bylaws postdating 1970" (Matter of Venigalla v Alagappan, 307 AD2d 1041, 1042 [2d Dept 2003]). Since none of the trustees had been elected as the 1970 bylaws required, the Appellate Division removed the board and directed "the appointment of a referee to direct and oversee a reorganizational meeting of the Society for the purpose of electing a new Board" (id. at 1043).

Supreme Court's attempts, on remand, to carry out the Appellate Division's 2003 order generated years of bitter litigation that need not be described here. At length, a new election was held—resulting in a board virtually unchanged from the old one. Despite their success in the election, the trustees appealed to the Appellate Division from a 2006 judgment confirming its results, arguing in substance that the election should never have been held. The Appellate Division affirmed the judgment in 2007 (41 AD3d 725 [2d Dept 2007]). We granted leave to appeal from the Appellate Division's 2007 order of affirmance, bringing up for review its 2003 order directing an election. We now reverse.

II

The Religious Corporations Law, providing rules for the governance of religious bodies, contains articles applicable to many specific denominations, but not to the Hindu faith. A Hindu group that wants to become a religious corporation may, like other groups not specifically provided for, choose to incorporate either under article 9 ("Free Churches") or article 10 ("Other Denominations"). The Society chose article 9. {**11 NY3d at 62} [*4]

An important difference between the two articles is that, while the trustees of article 10 corporations are elected by the body's members (see Religious Corporations Law §§ 191, 192, 194, 195, 199), article 9 corporations have self-perpetuating boards. The original trustees of an article 9 entity are named in its certificate of incorporation (Religious Corporations Law § 180), and Religious Corporations Law § 182 provides: "Any vacancies occurring in the said board of trustees shall be supplied by the remaining trustees." Article 9 makes no provision for any elections, other than votes of the trustees themselves. Indeed, the only "members" referred to in article 9 are the members of the board of trustees.

The provisions of the Society's 1970 bylaws that called for election of trustees by the "General Body" contradicted article 9 and were invalid from their inception. The Appellate Division erred in requiring the conduct of an election pursuant to those provisions.

That is enough to require invalidating the election, but we examine also the status of the 1970 bylaws as a whole—not just the provisions for election of trustees—so that the Society can know what its governing document is. We conclude that the 1970 bylaws have long been defunct. As the court said in *Pomeroy v Westaway* (189 Misc 307, 310 [Sup Ct, NY County 1947], *affd* 273 App Div 760 [1st Dept 1947]), "nonusage of a by-law, continuing for a considerable length of time, and acquiesced therein, will work its abrogation." There could hardly be a clearer case than this one for the application of that rule.

While the Appellate Division was justified in finding, based on the submission of the 1970 bylaws to the IRS, that the Society adopted those bylaws in 1970, the record shows that they fell into complete desuetude for the next three decades. By 1975, those running the Society's affairs had apparently forgotten (if they ever knew) that the 1970 bylaws existed. The Society was run in accordance with bylaws first adopted in 1978, which provided a different approach to governance than the 1970 bylaws, and all members of the Society knew or had the means of knowing this. Until 2001, none protested. To allow petitioners to resuscitate the 1970 bylaws when they finally rediscovered them would be unwise and unfair (see *Matter of George* [Holstein-Friesian Assn. of

Am.], 238 NY 513, 522 [1924]).{**11 NY3d at 63}

Accordingly, the order of the Appellate Division should be reversed, with costs, and the case remitted to Supreme Court for proceedings consistent with this opinion.

Chief Judge Kaye and Judges Graffeo, Read, Pigott and Jones concur; Judge Ciparick taking no part.

Order reversed, etc.