

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA639/2022
[2023] NZCA 649

BETWEEN ASHOKBHAI ROHIT
 Appellant

AND MOHAN DAYA
 Respondent

Hearing: 27 March 2023

Court: Cooper P, Lang and Downs JJ

Counsel: M K Mahuika and T N Hauraki for Appellant
 A S Butler KC and P A Fuscic for Respondent

Judgment: 15 December 2023 at 3.00 pm

JUDGMENT OF THE COURT

- A The appeal is dismissed.**
B Mr Daya is entitled to costs calculated for a standard appeal in band A together with usual disbursements. We certify for second counsel.
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REASONS OF THE COURT

(Given by Cooper P)

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Introduction

[1] This proceeding arises out of a dispute between members of the Yogi Divine Society (NZ) Inc (YDSNZ). The appellant, Ashokbhai Rohit, sought declarations in the High Court as to the person who should be regarded as the leader or Swamiji of YDSNZ. The respondent, Mohan Daya, also sought declarations by way of counterclaim. Mr Rohit's application for declarations was unsuccessful.¹ Mr Daya succeeded.² Mr Rohit now appeals.

[2] YDSNZ was established to be the New Zealand arm of the Yogi Divine Society and forms part of the Yogi Divine Society global network. It is convenient for present purposes to quote the following background from the judgment of Venning J:³

[11] The Worldwide Yogi Divine Society is based in Sokhada, India in the north-western state of Gujarat. The Swaminarayan movement goes back to its founder Lord Swaminarayan (born 1881) whom believers hold as a manifestation of God in the nineteenth century in Gujarat, India. He promised to manifest himself in subsequent generations through individual saints, who, to believers, embody the spirit of Lord Swaminarayan. According to the Yogi Divine Society, H D H Hariprasad Swamiji (born 1934) is the fifth guru-saint

¹ *Rohit v Daya* [2022] NZHC 2715 [High Court judgment] at [88].

² At [89].

³ Footnotes omitted.

in the line of Lord Swaminarayan. The Yogi Divine Society was started in 1971 by H D H Hariprasad Swamiji, who had received initiation as a monk in 1965 from his guru, Yogiji Maharaj, the guru of the BAPS Swaminarayan movement. The Yogi Divine Society is distinct from the other three Swaminarayan organisations, BAPS, GADI and ISSO. Centres of the Yogi Divine Society are located in England, New Zealand, Canada, Berlin, Columbus, Ohio and New Jersey. Centres in India are in Mumbai (Bombay) with the main centre in Vadodara, Gujarat.

[3] On 12 June 1978, a trust was registered under the Bombay Public Trust Act 1950 (Maharashtra, India), with the name Shri Hari Ashram (the Indian Trust). The original declaration of trust appointed Swamishree Hariprasadjji Gurushree Gnayanjivadasji (Swami Hariprasadjji) as the President of the Board of Trustees of the Indian Trust.⁴ The declaration provided that the Board of Trustees (which originally consisted of five persons, including Swami Hariprasadjji) was to act in accordance with the “wishes, desires and guidance” of the Advisory Board. Swami Hariprasadjji was empowered to determine the composition of the first Advisory Board, and it was provided that the Advisory Board was to be “presided over” by him or his successor(s). The President of the Advisory Board was:

... empowered to vary the composition of the Advisory Board by dropping out any member of the Board and/or appointing additional or new members of the Advisory Board as he may in his absolute discretion deem it necessary and fit.

[4] YDSNZ was incorporated as a charitable trust under the Charitable Trusts Act 1957 on 12 December 2001. Under the terms of the YDSNZ Constitution, its aims and objectives included: the establishment of an educational institution, a nursing home and health centres; objectives concerning the practice of yoga; the establishment of centres of physical culture; promoting community and educational developments; the building of a community hall in Auckland and other places in New Zealand; and the coordination, organisation and implementation of basic support and advisory-type community services.

⁴ For clarity, throughout this judgment we have referred to the late Swamiji as “Swami Hariprasadjji”.

Relevant facts

[5] Swami Hariprasadji resigned as the President of the Indian Trust on 5 October 2018. In his letter to the Secretary of the Indian Trust, he said:⁵

... Presently, I am 85 years of age. I am not in a position to [adhere to] the responsibilities as President in full, as my health remains ill and physical weakness is increasing day by day. I request you to accept this letter of resignation and relieve me from post of the President.

[6] On the 18 October 2018, the Trust Board of the Indian Trust passed a resolution accepting Swami Hariprasadji's resignation and appointed Sadhu Premswaroopdas Guru Gyanjivandasji (Sadhu Premswaroopdas) as President of the Indian Trust. Mr Daya does not accept the appointment Sadhu Premswaroopdas as President of the Indian Trust and gave affidavit evidence at the High Court challenging its validity.

[7] On 7 October 2019, the Secretary of the Indian Trust, Jayanthumar Mahadevprasad Dave, wrote to Mr Daya as President of YDSNZ advising of the appointment of Sadhu Premswaroopdas as President and Trustee of the Indian Trust. He asked Mr Daya to "initiate the necessary procedure to include Sadhu Premswaroopdas" as Swamiji in place of Swami Hariprasadji in the Constitution, Rules and Regulations of YDSNZ. Mr Daya says that he did not receive the letter. The High Court found that nothing was done to recognise Sadhu Premswaroopdas as Swamiji of YDSNZ.⁶

[8] On 11 November 2019, the Assistant Charity Commissioner of Vadodara Region in Gujarat made an order deleting Swami Hariprasadji as a Trustee on the record of the Indian Trust. He noted:⁷

... However, to enter the designation of President with the name of [Sadhu Premswaroopdas], who is registered as a trustee on the record of this trust is an internal matter of the trust and so report to enter the designation of President with his name is ordered to be filed.

[9] Significantly, in early 2020 Swami Hariprasadji visited New Zealand where he met with Mr Daya, Mr Rohit and other members of YDSNZ. He remained in

⁵ We note that this letter was translated into English from Gujarati.

⁶ High Court judgment, above n 1, at [16].

⁷ We note that this order was translated into English from Gujarati.

New Zealand for some months as a consequence of the COVID-19 lockdown. On 5 June 2020, he met with Mr Daya and a number of other “devotees” including the Secretary of YDSNZ, Ramesh Maisuria. According to Mr Maisuria, Swami Hariprasadjī said that, due to his deteriorating health, he wished the two regional Saints (the Pradeshik Saints) to assume responsibility for the administration of YDSNZ.⁸ Mr Maisuria said that he took notes of the Swamiji’s instructions which were subsequently approved by the Swamiji and “notarized”. He attached the translation to an affidavit that he filed in the High Court. That evidence was disputed by the appellant. However, if true, Swami Hariprasadjī’s action would have been at odds with the nomination of Sadhu Premswaroopdas as his successor.

[10] Swami Hariprasadjī passed away on 26 July 2021.

[11] On 11 October 2021, Mr Daya, Mr Maisuria and other members of the original Executive Committee attempted to vary the YDSNZ Constitution pursuant to a deed of variation of trust (the Deed of Variation). The Deed of Variation purported to:

- (a) alter four of the charitable aims and objectives of YDSNZ;
- (b) alter r 4.1, the interpretation rule as follows:
 - (i) the definition of "Swamiji" was changed to identify the Pradeshik Saints as Swami Hariprasadjī’s appointed replacement; and
 - (ii) the “Pradeshik Saints” were defined as two named “Regional Spiritual Leaders”:
- (c) alter r 5.4, the rule specifying the role of Swamiji, to remove the power of the Swamiji to appoint a successor and provide that, on retirement,

⁸ Those identified as the Pradeshik Saints were Ashokkumar Bhulabhai Patel and Sadhu Shasvatswaroopdas Guruhariprasaddas. The notes taken by Mr Maisuria refer to Ashokbhai Patel and Shashwat Swami, but we have adopted the names as they appear in the affidavit evidence of Mr Patel.

all powers held by the Swamiji are exercised by the appointed Pradeshik Saints; and

- (d) alter r 6.1.2, the executive and management rule, to remove Mr Rohit as a member of the Executive Committee.

Venning J recorded a concession made by counsel for Mr Daya in the High Court that the changes purported to be made by the Deed were not validly made.⁹

[12] In response, on 2 December 2021, Sadhu Premswaroodas signed a deed of replacement and appointment (the Deed of Replacement and Appointment) purporting to remove and replace Mr Daya as President, as well as the other members of the Executive Committee, and appoint Mr Rohit as President and the other replacement officers of the Executive Committee. Mr Daya, as well as a number of others who were former office holders, did not recognise that Sadhu Premswaroodas had the status of Swamiji of YDSNZ and did not accept the validity of the Deed.

[13] On 12 March 2022, the former officers purported to hold a Special General Meeting (SGM). This meeting confirmed Mr Daya as the President of YDSNZ, recorded it did not accept Sadhu Premswaroodas as the Spiritual Leader of the Indian Trust nor the changes he had attempted to make. Further, it resolved to change a number of rules in the Constitution.

The proceeding in the High Court

[14] Mr Rohit sought declarations in the High Court that:

- (a) Sadhu Premswaroodas, successor to Swami Hariprasadj, is the current President of the Indian Trust and the Swamiji of YDSNZ.
- (b) The Deed of Replacement and Appointment dated 2 December 2021 was valid and effective in removing the former officers of YDSNZ and

⁹ High Court judgment, above n 1, at [19], n 6.

appointing Mr Rohit as President and the other replacement officers of the Executive Committee.

[15] Mr Daya counterclaimed, seeking declarations that:

- (a) The resolutions adopted at the SGM (including confirmation of his position as President) were validly adopted.
- (b) The amendments to the Constitution are legally effective.
- (c) The other resolutions adopted at the SGM were validly adopted.

[16] Despite the complex factual matrix, the Judge considered there were three principal issues. They were:¹⁰

- (a) What is the nature of the relationship between the Indian Trust and YDSNZ, specifically, is the President of the Indian Trust also the successor Swamiji of YDSNZ?
- (b) Did Swami Hariprasadjji appoint Sadhu Premswaroopdas his successor as Swamiji?
- (c) If the answer to the first two questions was no, was the SGM held by YDSNZ on 12 March 2022 properly constituted and were resolutions it passed valid?

Issue one: the position of Swamiji of YDSNZ

[17] The Judge first addressed the position of the Swamiji of YDSNZ. He accepted for the purposes of his analysis that Swami Hariprasadjji resigned his position as President of the Indian Trust and that Sadhu Premswaroopdas was appointed President of the Indian Trust.¹¹ The question was whether Sadhu Premswaroopdas, by virtue of holding his position, succeeded Swami Hariprasadjji as Swamiji for the purposes of

¹⁰ At [24].

¹¹ At [34].

the YDSNZ Constitution.¹² He considered there were a number of factors which suggested the appointment of Sadhu Premswaroopdas as President of the Indian Trust did not lead to him being Swami Hariprasadji's successor as Swamiji of YDSNZ.¹³ These may be summarised as:

- (a) There is a difference between the roles Swami Hariprasadji held as President of the Indian Trust and as Swamiji of YDSNZ. Under the Indian Trust, the President had a "hands-on" role as President of the Board of Trustees. By contrast, the role of Swamiji of YDSNZ was to provide direction and guidance, but not necessarily to engage in the day-to-day management of YDSNZ. The Judge noted that the Swamiji was not President of YDSNZ; that role was fulfilled by Mr Daya.¹⁴
- (b) Rule 5.4 of the Constitution of YDSNZ provided for the Swamiji to retire and appoint a successor. That plainly related to his successor as Swamiji of YDSNZ, it was not related in any way to the presidency of the Indian Trust.¹⁵ While Swami Hariprasadji was empowered to appoint a person or person(s) to exercise his powers as Swamiji of YDSNZ, if he did not do so, the Executive Committee was to have all the former powers of the Swamiji of YDSNZ.¹⁶ It was significant that the rule expressly provided that no other Swamiji of India was to exercise the powers, but they would vest in the Executive Committees.¹⁷

[18] For these reasons, the Judge rejected the premise that the President of the Indian Trust, by virtue of his role, also holds the role of Swamiji for the purposes of YDSNZ.¹⁸ In fact, the Indian Trust Deed confined the activities of the Indian Trust to India.

¹² At [34].

¹³ At [37].

¹⁴ At [38].

¹⁵ At [39].

¹⁶ At [40].

¹⁷ At [40].

¹⁸ At [47].

Issue two: appointment of Sadhu Premswaroopdas as Swamiji

[19] Turning to the issue of whether Swami Hariprasadjji appointed Sadhu Premswaroopdas as his successor, the Judge found there was no evidence he had done so.¹⁹ In this respect, he noted that Swami Hariprasadjji had explained he was standing down as President of the Indian Trust in October 2018 because of his age and health. Nevertheless, he was able to travel to New Zealand in early 2020 to meet with, engage with and provide guidance to the members of YDSNZ. That was entirely consistent with him still holding the position of Swamiji of YDSNZ.²⁰ Further, there was no mention or record of Swami Hariprasadjji at any stage suggesting that he had appointed Sadhu Premswaroopdas to hold the role of Swamiji of YDSNZ.²¹

[20] The Judge also rejected an argument in advance by counsel for Mr Rohit that the Deed of Replacement and Appointment was valid and effective in removing Mr Daya as President of YDSNZ and appointing Mr Rohit. The argument could not succeed because Sadhu Premswaroopdas was not the Swamiji of YDSNZ and had no authority to purport to remove Mr Daya and the other members of the Executive.²²

Issue three: the SGM

[21] The Judge then turned to Mr Daya’s application for declarations as to the validity of the 12 March 2022 meeting and resolutions.²³ The Judge addressed the arguments raised by Mr Rohit under the headings of “*Quorum*”,²⁴ the “*Notice of meeting*”,²⁵ and the “*Change in the rules*” at the meeting.²⁶

[22] As to quorum, he held that r 12.6 of the Constitution was poorly worded and fundamentally defective, to the extent that effect could not be given to it.²⁷ This meant that there was no quorum requirement.²⁸ Since the total votes cast represented

¹⁹ At [48]–[49].

²⁰ At [49].

²¹ At [50].

²² At [56].

²³ At [57].

²⁴ At [73]–[79].

²⁵ At [80].

²⁶ At [81]–[87].

²⁷ At [76].

²⁸ At [76].

95 per cent of the membership, the required majority to alter the rules of the YDSNZ was clearly met.²⁹

[23] As to the alleged invalidity of the notice of meeting, the Judge recorded the acceptance of counsel that if the actions of Sadhu Premswaroodas seeking to set aside the appointment of the President and Secretary were ineffective (as the Judge found) then the notice of meeting was on its face valid, as it had been issued by Mr Maisuria, the Secretary of YDSNZ.³⁰

[24] As to the issue concerning the change in the rules, he considered that the amendments made had simply elaborated the existing charitable objects of YDSNZ.³¹ He also applied the principle that generally the Court would not intervene when the vote of the majority could rectify any irregularity in the proceedings.³²

[25] In the result, the Judge granted the declarations sought by Mr Daya, and rejected Mr Rohit's application.

The arguments on appeal

[26] In advancing the appeal Mr Mahuika, counsel for Mr Rohit, challenged the Judge's approach to the issue of succession to the position of Swamiji of YDSNZ. He submitted this was largely a question of fact: whether and how Swami Hariprasadj exercised the power to appoint his successor.

[27] Mr Mahuika claimed that the Judge had not properly assessed what occurred in relation to the steps taken to replace Swami Hariprasadj as president of the Indian Trust. He emphasised correspondence and resolutions in evidence concerning the meeting of the Indian Trust on 18 October 2018. He submitted the clear legal position was that Sadhu Premswaroodas was the President of the Indian Trust and having assumed that role had replaced Swami Hariprasadj as Swamiji of YDSNZ. There is difference in practice between the roles of President of the Indian Trust and

²⁹ At [77]–[78].

³⁰ At [80].

³¹ At [84].

³² At [86] citing *Swan v Massey University Students' Association* [1972] NZLR 985 (SC) at 987–988; and *Turner v Pickering* [1976] 1 NZLR 129 (SC) at 141.

Swamiji of YDSNZ. We deal with the details of Mr Mahuika's argument in the discussion below.

[28] The other issues pursued on appeal concerned alleged deficiencies with the SGM. The appellant claimed that the changes made were not valid because they had effectively sought to change and confirm members of the Executive Committee without holding a proper election, and did not comply with the requirements of the Constitution in terms of notice or quorum. Also, the evidence of the votes cast was unclear, unverified and unsafe. In the circumstances, the shortcomings were significant and raised doubt as to the safety of the outcome.

[29] For Mr Daya, Mr Butler KC's principal submission was that the Constitution of YDSNZ, properly construed, makes it clear that YDSNZ is a separate entity to the Indian Trust. The definition of "Swamiji" in r 4.1, read together with r 5.4, meant that a "successor" could only be someone appointed by Swamiji before or after his retirement. No other Swamiji of the Indian Trust could exercise powers reserved by the YDSNZ Constitution and there could be no automatic transfer of power from the Swamiji to some other person as a consequence of a change of office in India. In any event, Mr Daya did not accept that Sadhu Premswaroopdas had been validly appointed as the President of the Indian Trust

[30] Further, nothing in the Constitution prevented the members of YDSNZ from changing it. Mr Butler argued that the resolutions adopted by YDSNZ at the SGM were valid and the arguments to the contrary were properly rejected by the High Court.

Analysis

[31] We first address the issue of the identity of Swami Hariprasadji's successor and then address the grounds of appeal relating to the validity of the SGM.

Issue one: Swami Hariprasadji's successor

[32] First, we assess whether the President of the Indian Trust is also, by virtue of that role, Swamiji of YDSNZ.

[33] Mr Mahuika criticised Venning J’s reliance on a supposed difference in the roles of the President of the Indian Trust and Swamiji of YDSNZ. The Judge had contrasted the “hands-on” role of the President of the Indian Trust and the role of providing “direction and guidance” which the Swamiji had under the YDSNZ Constitution.³³ Mr Mahuika said that reasoning was wrong and overlooked the Swamiji’s extensive powers of appointment under the Constitution, which went beyond mere direction and guidance.

[34] We do not consider much turns on the extent of any difference in the roles of President of the Indian Trust and Swamiji of YDSNZ. That issue cannot overcome the conclusion to be derived from the rules discussed below.

[35] Rule 4.1 of the Constitution defined “Swamiji” as meaning “Swami [Hariprasadji], the Spiritual Head of Shrihari Ashram, Sokhada, Taluka Baroda, India or his successor or any subsequent successor”. On its face that definition states that the Swamiji is Swami Hariprasadji; the subsequent words referring to him as the Spiritual Head of Shrihari Ashram and so on appear most naturally to relate to Swami Hariprasadji himself, not to the role of Swamiji. The words “or his successor or any subsequent successor” again appear to link back to Swami Hariprasadji. If the intention had been to provide that the Swamiji was Swami Hariprasadji in the first instance and thereafter anyone who succeeded him as the person who was the Spiritual Head of the Indian Trust, a different form of wording would have been more appropriate to convey that meaning. We think the High Court’s interpretation of the definition is correct and congruent with other provisions of the Constitution.

[36] The role of Swamiji was set out in r 5. Rule 5.1 was in the following terms:

5 1 Swami [Hariprasadji], the Spiritual Head of Shrihari Ashram, Sokhada, Taluka Baroda, India shall have sole authority to nominate and appoint for such time such persons as he thinks fit as President, Vice President, General Secretary, Treasurer, and committee members which shall be called the Executive Committee of the Society. In the absence of such nomination an[d] appointment by Swamiji the Executive Committee shall be elected as set out in paragraph 7.

³³ At [38].

[37] Although these words again describe Swami Hariprasadji as the Spiritual Head of the Indian Trust, the powers outlined are personal powers of Swami Hariprasadji, and are not conditional on him being in his role in respect of the Indian Trust. Rather, they relate to his position as Swamiji of YDSNZ, and are powers exercisable in that role, to appoint office holders in YDSNZ.

[38] Under r 5.2, decisions of the Executive Committee of a major nature are required to be submitted to Swamiji for his approval and assent “in order to be effective”. No action in accordance with such decisions could be taken without the prior approval of the Swamiji. Under r 5.3, the Swamiji, if he thinks fit, has the power to veto any resolution or decision of the Executive Committee or any other committee. We see these rules as neutral for the purposes of the present issue.

[39] But r 5.4 was in the following terms:

5 4 If Swamiji retires for any reason whatsoever all his powers reserved by these Rules and Regulations and the Constitution will be exercised by such person or persons or committee as he may appoint before or after his retirement and in such a way he may direct. In the absence of such nomination or appointment the said powers will not be exercised by any other Swamiji of Shrihari Ashram, Sokhada, Taluka Baroda, India or persons, but will vest in the Executive Committee, however due consideration shall be given to the provisions of rule 12 5 herein at all times.

[40] This rule is notable for a number of reasons. First, it makes no reference to Swami Hariprasadji’s position as Spiritual Head of the Indian Trust, in fact no reference at all to the Indian Trust. The retirement is clearly as Swamiji for the purposes of the Constitution of YDSNZ. Second, the rule provides for nominations and appointments by the Swamiji, either before or after his retirement. While there could be practical difficulties with appointments made after retirement, the significant point for present purposes is that the drafting underlines that the power was attached to Swami Hariprasadji personally. Again, we consider it is clear that the “retirement” contemplated here is retirement of Swami Hariprasadji as Swamiji of YDSNZ: an ongoing ability to exercise the r 5.4 powers is inconsistent with the idea that the successor to the position of Spiritual Head of the Indian Trust is also Swamiji of YDSNZ. If that is what was intended, it seems inexplicable that there should be

provision for this post-retirement exercise of powers, which he would notionally be exercising to the exclusion of his successor as Spiritual Head of the Indian Trust.

[41] In addition, decisively, r 5.4 provides that if the Swamiji does not exercise the powers of nomination and appointment, the powers are not to be exercised “by any other Swamiji of Shrihari Ashram, Sokhada, Taluka Baroda, India or persons, but will vest in the Executive Committee”. In other words, if Swami Hariprasadji did not make the required nominations or appointments, the power to do so is exercisable by the Executive Committee. The powers are specifically not to be exercised by the Swamiji of the Indian Trust. This part of the rule cannot make sense unless a distinction is drawn between the roles of Swamiji of YDSNZ and the equivalent position in the Indian Trust.

[42] Rule 6 dealt with the Executive Committee and Management. Rule 6.1.1 provided that Mr Daya was to be the “first President nominated and appointed by Swamiji” and that he would “hold the said office until he is replaced by Swamiji”.

[43] Rule 6.1.2 appointed other persons to be the Vice President, General Secretary, Assistant Secretary and Treasurer of YDSNZ. They included Mr Rohit as the “first Assistant Secretary”. Fourteen other named persons were appointed as committee members by r 6.1.3. Rule 6.1.4 provided that the management of YDSNZ would vest in the Executive Committee and r 6.1.6 provided that the President would preside at all meetings of YDSNZ or the Executive Committee. Rule 6.1.7 provided that a vacancy in membership of the Executive Committee or in any office would be filled by nominations of the Swamiji; in the absence of such nomination or appointment the Executive Committee would “fill up the vacancy”. There is nothing in r 6 which detracts from the conclusion we have reached about the meaning of the earlier rules.

[44] Rule 7 dealt with elections of office-bearers and the Executive Committee in the absence of nomination and appointment by the Swamiji. Rule 7.1 provided:

7 1 In the absence of such nomination and appointment of the Executive Committee by Swamiji due to the unavailability of Swamiji for whatsoever reason or in the absence of any other person nominated or appointed pursuant to paragraph 5 4 and on the decision of a three-quarter majority of the current Executive Committee there

shall be an election at the Annual General Meeting of the Society to elect the said officers of the Executive Committee which otherwise would have been by Swamiji's nomination and appointment

[45] This rule is a necessary provision to ensure r 5.4 is able to be applied. It is predicated on the non-exercise by the Swamiji of the powers given by r 5.4 to appoint other persons to exercise his powers of nomination and appointment of office-holders and members of the Executive Committee under the Constitution, consequent on his retirement. Rule 7.1 establishes how the Executive Committee is to exercise the powers it assumes in these circumstances. The wording of the rule is not without its difficulties, but this is not significant for the present issues. It appears to contemplate that a majority of three-quarters of the Executive Committee could exercise the Swamiji's powers to fill any vacancy in any office and that if such a majority cannot be achieved the position would be filled by election at the Annual General Meeting.

[46] Whatever its precise meaning, the importance of r 7.1 is that it provides how vacancies are to be filled when the Swamiji's powers have not been exercised under r 5.4. As with the other provisions we have discussed, r 7.1 is consistent with internal control of the affairs of YDSNZ, not decision making in India.

[47] For these reasons we consider the High Court was clearly correct to conclude that the President of the Indian Trust is not, by reason of holding that position, also the Swamiji of YDSNZ.³⁴

[48] Turning to the identity of Swami Hariprasadji's successor, we note extensive affidavit evidence was filed in the High Court, in which the parties offered conflicting accounts of events that transpired in India following Swami Hariprasadji's resignation as President of the Indian Trust and in New Zealand during Swami Hariprasadji's visit to New Zealand in 2020.

[49] Venning J discussed the evidence about whether Sadhu Premswaroopdas had been validly appointed as the President of the Indian Trust.³⁵ As he acknowledged, it is not generally possible to resolve conflicting affidavit evidence in a declaratory

³⁴ High Court judgment, above n 1, at [47].

³⁵ At [52]–[55].

proceeding such as this.³⁶ In the end the Judge considered it was unnecessary to decide whether Sadhu Premswaroopdas was properly appointed as President of the Indian Trust because, whether or not that was the case, his appointment as President of the Indian Trust would not mean that, by virtue of holding that position, he would be Swamiji of YDSNZ.³⁷

[50] Mr Mahuika submitted there was no basis for the Court in New Zealand to look behind the formal record of what had occurred in India. The other argument advanced by Mr Mahuika was that although Swami Hariprasadjji did not himself give notice to YDSNZ that Sadhu Premswaroopdas was to be his successor for the purposes of r 5.4 of the Constitution, that was his clear intention in appointing him as President of the Indian Trust.

[51] For the reasons we have already addressed, we consider the wording of the relevant rules in YDSNZ's Constitution establishes that YDSNZ was intended to function as a separate entity to the Indian Trust. It had its own requirements for the making of appointments including the appointment of persons to exercise his powers. There is no basis for construing the Constitution as contemplating that the Swamiji's successor as President of the Indian Trust would, by virtue of such appointment, be the Swamiji of YDSNZ. The specific proscription in r 5.4 of "any other Swamiji of Shrihari Ashram" (which must necessarily refer to a successor of Swami Hariprasadjji on the Indian Trust) makes it inherently unlikely that the Constitution envisaged the successor as President of the Indian Trust would be the de facto nominee. We consider a specific nomination would be required to comply with the rule and establish that Sadhu Premswaroopdas was appointed as Swamiji of YDSNZ.

[52] Mr Mahuika endeavoured to rely on the letter dated 7 October 2019 sent by Mr Dave (the Secretary of the Indian Trust) to Mr Daya, which Mr Daya said he did not receive. Mr Mahuika referred to the following paragraphs of the letter:

This is to inform you that our Spiritual Master His Divine Holiness [Swami Hariprasadjji] has resigned from the post of the President as well as the Trustee of Shri Hari Ashram due to ageing and deteriorating health conditions w.e.f. 05.10.2018. As per suggestion and wish expressed by

³⁶ At [26].

³⁷ At [55].

[Swami Hariprasadj]; [Sadhu Premswaroopdas] is unanimously appointed as the President of Shri Hari Ashram. Therefore, all the powers vested with Swamiji / [Swami] are entrusted to [Sadhu Premswaroopdas]. The necessary official procedure is initiated in this regard.

[Sadhu Premswaroopdas] is the successor of [Swami Hariprasadj], Spiritual Head of Shri Hari Ashram, Haridham, Sokhada, Ta.& Dist. Vadodara. Therefore, you are requested to initiate the necessary procedure to include [Sadhu Premswaroopdas] as Swamiji in place of [Swami Hariprasadj] in the Constitution, Rules & Regulations of Yogi Divine Society (NZ) under the Charitable Trust Act, 1957.

[53] We agree with Mr Mahuika that whether or not Mr Daya received the letter is not significant. For present purposes the issue is whether the letter establishes that Swami Hariprasadj appointed Sadhu Premswaroopdas to be his successor as Swamiji of YDSNZ. We do not consider this letter can be viewed as the exercise by Swami Hariprasadj of his power of appointment under r 5.4. It plainly does not refer to the appointment of Sadhu Premswaroopdas to be Swamiji of YDSNZ, but rather refers to his appointment as President of the Indian Trust. The letter seems to proceed on the assumption that Sadhu Premswaroopdas' succession as President of the Indian Trust automatically made him Swamiji of YDSNZ. That assumption was incorrect, for the reasons we have explained above.

[54] Mr Daya gave evidence that during Swami Hariprasadj's extended visit to New Zealand in 2020 he spoke on 5 June to a meeting of "devotees" and "declared and directed us that he wanted to hand over the responsibility of [YDSNZ] to the [Pradeshik Saints] which he appointed in 2013". This evidence was confirmed by others who made affidavits in the High Court.³⁸ Mr Mahuika was critical of this evidence on various bases, including that the announcement had not been foreshadowed, or once made not publicised, recorded nor reduced to written form. Neither was it clear that the Pradeshik Saints were to be the Swamiji's successors. He also claimed that the two took no steps following the 5 June 2020 meeting to assume the role of Swamiji and that the steps taken in relation to the Deed of Variation contradicted the alleged appointment.

³⁸ For example, the affidavits of Ashokkumar Bhulabhai Patel, Sadhu Sarvanamandas Guruhariprasaddasji and Ramesh Maisuria. Mr Patel being one of the Pradeshik Saints.

[55] The issues raised by Mr Mahuika are not sufficient to persuade us to put aside the evidence of those who were present at the 5 June meeting. According to the notes that Mr Maisuria took, Swami Hariprasadji, referring to the Pradeshik Saints, said that he wanted to “submit entire administration of this place to these two saints... So, from today we are assigning entire responsibilities of New Zealand Mandal(board) to these two saints. As per the authority assigned to me by the constitution, I hereby handover(responsibility) to these two saints and they shall take over this responsibility from today.” We think this evidence, if accepted, is a sufficiently clear nomination for the purposes of r 5.4 of the Constitution of YDSNZ.

[56] It is also telling that there is no evidence that Swami Hariprasadji, during his lengthy stay in New Zealand during 2020, made any reference to having nominated Sadhu Premswaroopdas to be his successor as Swamiji of YDSNZ. This is significant given Mr Rohit’s claim that the appointment had occurred in October 2018. Mr Rohit gave evidence of having spent a good deal of time with Swami Hariprasadji during his New Zealand visit. He referred to the absence of any discussion with him about the appointment of the Pradeshik Saints; but he gave no evidence of any discussion with Swami Hariprasadji about the role of Sadhu Premswaroopdas. If anything, he confirmed that he had not had such a discussion in saying that “[i]f the Former President had wanted to make any constitutional changes, he would have discussed it with all of the Executive Committee present”.

[57] In the result we are not persuaded that Sadhu Premswaroopdas was appointed by Swami Hariprasadji to be his successor as Swamiji of YDSNZ. Given our earlier conclusion that appointment of Sadhu Premswaroopdas as President of the Indian Trust would not make him the Swamiji of YDSNZ, we consider the High Court was correct to decline the first declaration sought by Mr Rohit. It is unnecessary for us to consider and determine the additional arguments addressed by Mr Butler challenging the appointment of Sadhu Premswaroopdas as President of the Indian Trust.

[58] The signing of the Deed of Replacement and Appointment by Sadhu Premswaroopdas on 2 December 2021 was a purported exercise of the powers of nomination and appointment of the Swamiji under r 5.4 of the Constitution of

YDSNZ. It follows from the conclusions we have already reached that the declaration sought by Mr Rohit, that the Deed was valid and effective, was rightly rejected by the High Court.

Issue two: the validity of the SGM

[59] Four issues were raised in the appellant's submissions concerning the SGM. He contended the resolutions passed at it were invalid and of no effect because:

- (a) the SGM did not have the required quorum of members present;
- (b) the evidence of the voting was "unclear, unverified and therefore inherently unsafe";
- (c) the members were not informed of the nature and impact of the changes to the constitutional changes to be voted on, which meant the notice of the meeting was inadequate; and
- (d) the SGM sought to change and confirm members of the Executive Committee without holding a proper election in accordance with the requirements of the Constitution.

(a) Quorum

[60] Rule 12.6 of the Constitution provides:

12.6 The quorum of Annual General Meeting or a Special General Meeting of the Society will be three quarters (3/4) of the total number of the members in the register, present in person, whichever is less

[61] Venning J noted that the rule was fundamentally defective and could not be given effect to, because it lacked a comparator for the purposes of ascertaining whichever was the "less".³⁹ He contrasted this with the equivalent rule for the Yogi Divine Society of Mumbai, which required a quorum of "51 or 1/10th of the total number of the members in the register, present in person, whichever is less".⁴⁰ He

³⁹ High Court judgment, above n 1, at [76].

⁴⁰ At [75].

rejected Mr Rohit’s submission that “whichever is less” in the YDSNZ Constitution was a reference to rounding.⁴¹ As a result he held there was no quorum requirement.

[62] YDSNZ has 390 members, of whom 364 cast votes either in person or by proxy. All votes were in favour of the changes proposed. The Judge recorded that 250 members voted by proxy, and 114 members voted in person.⁴² He referred to r 9.1 which provides that the Constitution may be altered:⁴³

... by resolution passed at a duly constituted General Meeting of the Society by a majority of not less than three fourths of the members present in person or by proxy and entitled to vote ...

[63] Because there was no effective quorum in the Constitution, he considered that any quorum requirement could be achieved by voting by a majority of the members.⁴⁴ Rule 9.1 meant that members could vote by proxy and votes so cast could be taken into account.⁴⁵ In fact the total votes cast represented more than 95 per cent of the members.⁴⁶

[64] Ms Hauraki, who presented this part of the argument on appeal, submitted that a reasonable interpretation of r 12.6 was that it required 293 members to be physically present at a meeting for business to be validly conducted. Here, only 114 members were present either physically or by Zoom, about 29 per cent of the total membership. Consequently, there was no effective quorum.

[65] We do not accept that argument. We think the Judge was right to put aside r 12.6. Ms Hauraki’s argument in effect seeks to apply the rule by rewriting it. In doing so, she adds a requirement that three-quarters of the total membership must be physically present. We think this overlooks the role of any quorum requirement, which is to ensure that sufficient numbers of members vote in a process that is likely to result

⁴¹ At [76].

⁴² At [73].

⁴³ At [77].

⁴⁴ At [78] citing Mark von Dadelszen *Law of Societies in New Zealand: Unincorporated, Incorporated, and Charitable* (3rd ed, LexisNexis, Wellington, 2013) at [8.3.8] citing *McCull v Horne & Young* (1888) 6 NZLR 590 (SC); and *The Mayor, Constables, and Co of Merchants of The Staple of England v The Governor and Co of the Bank of England* (1887) 21 QBD 160 (CA).

⁴⁵ High Court judgment, above n 1, at [79].

⁴⁶ At [78].

in an effective representation of the views of the members. The result of Ms Hauraki's argument is that all the proxy votes (250 in number) are effectively put to one side.

[66] We consider that would be a very odd outcome given the fact that YDSNZ is a nationwide body, and on this occasion, meetings were held in five different cities. It is most unlikely the rules were intended to require three-quarters of the membership to be physically present and be unable to vote by proxy. Further, as set out above, r 9.1 contemplates that alterations to the rules may be made "by a majority of not less than three fourths of the members present in person or by proxy and entitled to vote". If the threshold for alteration of the rules is three-fourths of the members who are present in person or by proxy, it is most unlikely that the quorum rule was intended to impose a more stringent requirement.

[67] We reject this ground of appeal.

(b) Evidential issues with votes

[68] This ground asserts that the voting data recorded in relation to the SGM is "extremely vague". Ms Hauraki suggested that there was insufficient evidence as to the numbers of persons who were present or who voted by proxy. There was no evidence of who gave proxies, nor that those who provided proxies were in fact members. Those present at the meeting were not identified and nor were those who voted in person. As a consequence, it had not been shown that those who voted actually had voting rights. The minutes of the SGM did not provide further elucidation of these issues, simply noting the resolutions that were passed.

[69] To these contentions, Mr Butler gave the simple rejoinder that the statement of claim had not raised any issue about the validity of the votes cast, and discovery had not extended to the ballot papers for the actual votes cast. On the other hand, there was evidence of the number who voted in person, and those who voted by proxy. Referring to *Calvert & Co v Dunedin City Council*, Mr Butler submitted the minutes of the meeting are prima facie evidence of what occurred, and in this case the minutes established what the voting was.⁴⁷ There was no reason to go behind them.

⁴⁷ *Calvert & Co v Dunedin City Council* [1993] 2 NZLR 460 (HC) at 466 cited with approval in

[70] The evidence here consists not only a summary of the numbers of votes cast, differentiating between the five different locations where meetings were held,⁴⁸ but also gives totals of the votes cast according to whether they were cast in person or by proxy. In addition, the evidence of Mr Maisuria confirmed the position in the following paragraph:

I confirm that 250 proxies were submitted and 114 members were present at the SGM on 12 March 2022, including members connecting to the SGM by Zoom, the attendees being at Auckland, Tauranga, Gisborne, Wellington, and Christchurch. A total of 364 members' votes was given. All of those who voted... in support of passing the resolutions referred to in Annexures "A" and "B". This was a 100% vote in favour of all the resolutions by members who voted, whether present or by proxy, out of approximately 400 members of the Society. Himanshu Patel was present at the Auckland SGM and voted in support of the resolutions. Ashokbhai Rohit never responded to the notification of the SGM.

[71] Mr Daya gave evidence to similar effect. There was no evidence to the contrary. Mr Rohit was evidently not present and did not vote. The argument presented is essentially that the evidence was insufficiently detailed, but in the absence of a contest raised by the evidence we are satisfied that the record is sufficient to establish the votes cast.

[72] We do not see this case as at all similar to *Tamaki v Māori Women's Welfare League Inc*,⁴⁹ a case to which we were referred by Ms Hauraki. In that case the plaintiff, Hannah Tamaki (wife of Brian Tamaki and a pastor in the Destiny Church) sought to be elected as National President of the Māori Women's Welfare League, but the League's Executive Committee resolved that her nomination should "not be actioned" in the forthcoming election.⁵⁰ It determined that three existing and 10 new branches of the League associated with Mrs Tamaki should not be permitted to vote.⁵¹

[73] Kós J allowed an application for judicial review, finding that the Executive Committee acted unlawfully in withdrawing Mrs Tamaki's name from

Bath v Singh [2012] NZAR 50 (HC) at [60].

⁴⁸ The evidence also records votes cast by proxy where members were in New Zealand, but not in the five listed locations.

⁴⁹ *Tamaki v Māori Women's Welfare League Inc* [2011] NZAR 605 (HC).

⁵⁰ At [3].

⁵¹ At [3].

the ballot papers.⁵² He also determined that the League acted unlawfully by not sending ballot papers to three existing branches associated with the Destiny Church.⁵³ But he took a different view in respect of the decision not to send ballot papers to the 10 new branches that had all been established on the same day.⁵⁴ That was because the evidence regarding the formation of the new branches gave the Judge “considerable disquiet regarding their legitimacy”.⁵⁵ In fact the Judge identified 14 different reasons, based on the evidence, for concluding that the new branches had not been properly established in accordance with the League’s constitution.⁵⁶

[74] This case has nothing of that flavour. The evidence is all one way. There is no basis on the evidence for us to reach a conclusion that the voting was not legitimate and did not have the outcome reported by Mr Maisuria and Mr Daya.

[75] We reject this ground of appeal.

(c) Members not fully informed

[76] Under this heading, Ms Hauraki argued that there was no evidence that members understood the “constitutional significance” of the proposed resolutions. They were effectively being asked to remove the ongoing role of the Swamiji and explicitly reject Sadhu Premswaroopdas as having any role in YDSNZ. The role was replaced by the Pradeshik Saints. Ms Hauraki complained that the High Court had characterised that change as an administrative one, whereas the change was significant having regard to the role of the Swamiji within the faith and the broader context within which YDSNZ operates as part of the worldwide Yogi Divine Society network.

[77] Ms Hauraki submitted members should have been told that Sadhu Premswaroopdas had been “legally recognised” as the President of the Indian Trust and also that he had been appointed to that role by Swami Hariprasadjji prior to his passing. Other issues raised were that Executive Committee members had failed to mention the Deed of Replacement and

⁵² At [59].

⁵³ At [77].

⁵⁴ At [77].

⁵⁵ At [67].

⁵⁶ At [67].

Appointment; and incorrectly represented that Mr Rohit had resigned from his position due to illness and had been validly removed by the Executive Committee. That was untrue. No mention was made that the Constitution provided that the charitable objects of the Society could not be altered.

[78] Ms Hauraki submitted that the material provided prior to the SGM and sent out with the notice calling the meeting was deficient in important respects and did not meet the necessary standard set in r 9.1 of the Constitution: that the notice be capable in both substance and form of enabling a member to reach an informed decision on matters to be presented at the meeting. Here, she argued in particular that:

- (a) It was not clear that the role of Swamiji's successor was being deleted.
- (b) No explanation was given that the impact of these changes would be to sever YDSNZ from the Indian Trust or that the powers under the Constitution that had been given to the Swamiji were now intended to be given to the Pradeshik Saints.

[79] Another complaint was that the Deed of Variation was proposed to be ratified, but no explanation was given as to why it was invalid. No mention was made of the Deed of Replacement and Appointment that had been signed by Sadhu Premswaroopdas. In the absence of this information, Ms Hauraki argued that it would be wrong to assume that members who participated in the vote fully understood the impact of the changes they were making.

[80] In response, Mr Butler submitted that the argument that members did not understand the constitutional significance of the proposed changes was contrary to the evidence. The resolutions had been distributed with the notice of the meeting, and the SGM lasted for some seventy-eight minutes. There was plainly discussion and contributions from the floor. Members were free to speak and did so. Mr Maisuria attached what he said was a "true copy" of the minutes of the meeting to his affidavit. He said that the meeting resolved to ratify the minutes of the special meeting held on 22 September 2021 and adopted alterations to various rules listed in the minutes. The minutes also record the ratification of the Deed of Variation, including ratification of

new wording (attached to the minutes) for r 6.1.2 concerning Mr Rohit's "cessation of office". Paragraph 5 and 6 of the minutes were in the following terms:

5. The members of the society only accept Mohan Daya as the president of [YDSNZ]. And do not accept [Sadhu Premswaroopdas] as the Spiritual leader or successor or president of ShriHari Ashram, SOKHADA, taluka Baroda or Yds India. And further we do not accept any appointment of any members for changes [Sadhu Premswaroopdas] is trying to Action for [YDSNZ].
6. That the executive committee be empowered to make changes to the constitution and rules of [YDSNZ] including but not limited to, keeping all powers and control of [YDSNZ] in the New Zealand executive committee with the provision of the Pradeshik Saints to provide guidance and further make any changes to the structure of the Society, either under the Charitable Trusts Act 1957 or the Incorporated Societies Act 1908.

[81] Mr Butler argued that the resolutions did not alter the charitable objects of YDSNZ, but rather "simply elaborated on the charitable objects of YDSNZ" as found by the High Court.⁵⁷ He also noted that the Deed of Replacement and Appointment was invalid because Sadhu Premswaroopdas had no power to make it. In the circumstances, Mr Rohit had been validly removed but, in any event, that issue is not material to the validity of the amendments to the Constitution. Since there was no mention of the Indian Trust in the Constitution prior to the amendments being made, and none thereafter, there was no link which needed to be formerly severed.

[82] We agree with Mr Butler's submissions. We do so in light of our determination that Sadhu Premswaroopdas' status in respect of the Indian Trust did not automatically make him Swamiji of YDSNZ. The proposal for the removal of an ongoing role for Swamiji's successor was plainly and clearly understood as demonstrated by the terms of the resolution made. All who voted were in favour of that. It is not significant that there was no reference to "invalidity" of the Deed of Variation; the issue of importance is that those at the meeting ratified it. We see no proper basis upon which the decisions made at the meeting can now be overturned.

[83] We also agree that the resolution did not purport to alter the charitable objects of YDSNZ. As Mr Butler pointed out, the Swamiji was not mentioned in the charitable

⁵⁷ High Court judgment, above n 1, at [84].

objects; it followed that deleting reference to him or altering the definition of Swamiji can have had no impact on the charitable objects of YDSNZ.

[84] As to the Deed of Replacement and Appointment, we have already determined that it was invalid. The failure to refer to it in the notice of the SGM could not affect the lawfulness of the business carried out.

[85] Accordingly, we are not persuaded that there was any error in the processes followed and this ground of the appeal is also rejected.

(d) Election

[86] The final complaint made by Mr Rohit about the SGM is that it amounted to an election of the Executive Committee, by purporting to remove him from his role on the Executive Committee and confirm Mr Daya as the President of YDSNZ.

[87] The argument was that r 6.1.2 of the Constitution provides that all members of the Executive Committee will hold office until they are replaced by other persons nominated by the Swamiji. In the absence of such nomination and appointment, r 7.1 required that an election should be held on the basis of a three-quarter majority of the current Executive Committee. Ms Hauraki submitted that if either Mr Rohit or Mr Daya's ongoing roles on the Executive Committee were in question, in the absence of the Swamiji, the proper course would have been to hold an election in accordance with the procedural requirements set out in r 12 of the Constitution, including calling for nominations in accordance with r 12.4. Instead, the procedure adopted was an attempt to circumvent the election requirements by effectively altering those provisions of the Constitution. Mr Butler noted that this was not an issue raised in the Court below. We have nevertheless considered it.

[88] We consider that r 6.1.2, on which Mr Rohit relies, only contemplates a process for removal and replacement of the persons originally appointed to be General Secretary and Treasurer. Mr Rohit was not the holder of either office but was rather the Assistant Secretary. Therefore, it seems an election was not required under r 7.1. In addition, r 6.1.3 only contemplates a process for the removal and appointment of the 14 named members of the Executive Committee, of which Mr Rohit is not one.

Further, r 6.1.4 only provides for the replacement and appointment of Executive Committee members by the Swamiji in specific circumstances — to increase the number of members of the Executive Committee.

[89] We consider that the circumstances here — the removal and replacement of a member in circumstances where that member unsuccessfully attempted to install an external leader as Swami Hariprasadji's successor as Swamiji of YDSNZ — were not contemplated by the Constitution. Therefore, r 7.1, requiring an election at the next Annual General Meeting of YDSNZ to elect new officers in the absence of nomination and appointment by the Swamiji, is not engaged.

[90] For these reasons, we reject the arguments raised by Mr Rohit concerning the SGM.

Result

[91] The appeal is dismissed.

[92] Mr Daya is entitled to costs calculated for a standard appeal in band A together with usual disbursements. We certify for second counsel.

Solicitors:

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