

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 59 of 2024

BETWEEN : **DAMENDRA AMAS GOUNDER** of Martintar, Nadi, Life
Member (LM 589) of the Then India Sanmarga Ikya Sangam.

Plaintiff

AND : **THEN INDIA SANMARGA IKYA SANGAM** in its capacity as
a duly incorporated company with special dispensation of the word
“Limited” having its registered office in Nadi, Fiji, and in its
capacity as the parent body for its youth branch the **THEN INDIA**
WALIBAR SANGAM FIJI.

Defendant

Before : U.L. Mohamed Azhar, Acting Judge.

Counsels : Mr. R. Singh and M. S. K. Ram for the Plaintiff
Mr. D.S. Naidu for the Defendant

Date of Hearing : 12 December 2024
Defendant’s Submission filed on : 13 February 2025
Plaintiff’s Reply Submission filed on: 05 March 2025
Date of Judgment : 07 April 2025

JUDGMENT

01. The plaintiff is a life member of the defendant. The defendant is a voluntary organization. It is registered under the Companies Act as a company limited by guarantee with the permission to dispense with the word “Limited”. Since its registration on 06 January 1938, the defendant has been engaging in various activities to achieve its objects enshrined in its Memorandum and Articles of Association (the Constitution).
02. The defendant is also the parent body for its two branches, namely, **THEN INDIA VALIBAR SANGAM FIJI** for young men, and **THEN INDIA MAATHAR SANGAM**

for young women. The affairs of the defendant are managed by the Council of Management. The Constitution of the defendant specifies how the defendant is structured, the roles and the responsibilities of the Council of Management including election of members to it and voting procedure. It also provides for the procedure for disciplinary actions against the members and their removal from the defendant.

03. The notice for the Annual General Meeting of the defendant was issued and the election of the office bearer was also scheduled to take place during the AGM on 31 March 2024. The plaintiff, on the morning of 21 March 2024, submitted his nomination to contest the election for the post of Vice President – South West. On the same day at about 3.56 pm, the plaintiff received a letter, via e-mail, immediately suspending him from the defendant, on the basis that, he was being subjected to disciplinary action for his conduct alleged to have been detrimental to the interest of the defendant. The said letters specified that, decision to suspend the plaintiff was taken pursuant to Clause 8.2.2 of the Articles of Association of the defendant.
04. The plaintiff through his solicitors wrote to the defendant and requested to uplift the suspension in order to contest the election. However, the defendant refused to do so. The plaintiff then commenced this proceedings by way of Originating Summons. Initially the plaintiff sued the National President and the General Secretary of the defendant as well. Subsequently, the plaintiff amended his claim by discontinuing the cause against them and continued only against the defendant. The plaintiff also filed an ex-parte summons seeking two orders, namely, (a) to uplift the suspension and (b) to permit him to contest the election. However, the previous judge refused to grant them in interim as they were substantive reliefs.
05. The amended summons is supported by an affidavit sworn by the plaintiff and filed with the original summons. The plaintiff sought the following declarations in his amended Originating Summons:
 - a. A declaration that the defendant’s Memorandum and Articles of Association (Defendant’s Constitution) does not empower it to suspend the plaintiff as its life member without commencing disciplinary action.
 - b. A declaration that the letter dated 21 March 2024 to the plaintiff breaches the defendant’s constitution, fundamental rule of law, and principles of democracy.
 - c. A declaration that the plaintiff remained and was a life member of the defendant at all material times.

- d. A declaration that the plaintiff, as the life member of the defendant was denied his fundamental rights to be a nominee for an office bearer position, participate and vote at the AGM of the defendant held on 31 March 2024.
- e. A declaration that the elections of office bearers at the AGM 2023 and 2024 of the defendant were held unlawfully; therefore outcome is null and void.
- f. A declaration that the decision of the defendant on 21 March 2024 suspending the life membership of the plaintiff for the defendant is null and void and of no legal effect.

06. In addition to the above declarations, the plaintiff sought the following orders from the court:

- a. An order that the defendant forthwith suspend the outcome of the election held at the AGM 2023 and call an election for all office bearer positions to allow all life members the right to be nominated, participate in and vote for office bearer positions.
- b. An order that the defendant forthwith suspend the outcome of the election held at AGM 2024 and call an election for all office bearer positions to allow the plaintiff the right to be nominated, participate in and vote for the office bearer positions.
- c. An order that suspension from membership of the defendant be uplifted forthwith and the plaintiff be deemed to be a bona fide member of the defendant.
- d. An order that, the plaintiff without any restraint whatsoever be permitted to contest the election for the position of Vice President South West at the Annual General Meeting and General Elections of the defendant to be convened on the 31st of March 2024.

07. It is obvious from the suspension letter dated 21 March 2024 that the defendant relied on the “HLB Report” prepared by HLB Mann Judd (Fiji) on the request of the defendant, to suspend the plaintiff. The plaintiff claimed that, use of HLB Report to suspend him was contrary to the constitution of the defendant, in light of the decision of the High Court in **Anand Sami Kumar v Praveen Kumar Bala**, HBC No. 90 of 2022 decided on 31 October

2022. The very reason for this claim is that, the defendant neither investigated the allegations, nor did it serve the charges before suspension.

08. The defendant served the charges on the plaintiff only on 02 October 2024 and filed the affidavit in opposition on the following day, i.e. 03 October 2024. The defendant simply took up the position that, the Council of Management has the power to remove anyone. The defendant further stated that, the HLB Report is one of the evidences against the plaintiff and there are other evidences which will be served on the plaintiff upon the direction of the Disciplinary Committee. Admittedly, no disciplinary action was pending against the plaintiff at the time he was suspended by the defendant on the day the former submitted his nomination to contest the annual election for the post of Vice President. The only document that was referred to, at that time was the HLB Report dated 08 July 2022.
09. Accordingly, the primary question to be determined in this matter is whether the constitution of the defendant does empower it to suspend the plaintiff or any member in general without disciplinary action? Interestingly, both parties rely on Clause 8 of the Articles of Association of the defendant which deals with disciplinary action against a member of the defendant. The determination of this primary question solely depends on the interpretation of Clause 8 of the Articles of Association. The Clause 8 reads as follows:

8. ANY member whose **conduct is found to be detrimental** to the interest of the Association may **after proper investigation be liable to disciplinary action** wherein the member may be;

8.1 Suspended or removed from the membership register or

8.2 Disciplined at the absolute discretion of the Council

PROVIDED

8.2.1 That, a meeting of the Council such action is approved by two thirds of the members of the Council at the meeting and the quorum at such a Council meeting shall not be less than seven members.

8.2.2 Any member facing disciplinary action shall immediately be suspended from the Association until the matter has been disposed of. (Emphasis is added).

10. The above clause 8 is unambiguous in its language. A textual analysis clearly indicates that, the above clause applies to every member of the defendant irrespective of type of the membership. Accordingly, a disciplinary action against any member does begin in the first

place unless two stages pass in the process. The first is the formation of opinion of a conduct of any member to be detrimental to the interest of the defendant. The Council of Management is entitled to form such opinion from any material or complaint available before it. However, formation of such opinion itself is not sufficient to hold such member liable to a disciplinary action. A proper investigation is required thereafter and this is the second stage. Any member may be liable to disciplinary action only after proper investigation.

11. The term “proper investigation” used in the above clause means a careful, systematic and comprehensive inquiry conducted to uncover the truth of such conduct. Accordingly, all opinions formed by the Council of Management do not necessarily warrant disciplinary action, because a proper investigation might refute some of such opinions. It is only after such investigation, a member is liable to disciplinary action. It is the investigation that determines whether the charges can be levelled against any member and whether he or she may be liable to disciplinary action. In fact it is the safeguard placed by the constitution of the defendant. It not only prevents frivolous or vexatious charges, but also ensures that due process is followed before any member is being subjected to disciplinary action. If this process is followed and investigation requires the charges to be levelled against any member, the defendant should commence the disciplinary action by serving the charges on the member. The moment the charges are served on any member, he is considered to be **facing disciplinary action**. The Clause 8.2.2 then comes to play and permit the defendant to suspend such member till the disciplinary action is disposed of.
12. This is the due process enshrined in Clause 8 of the Constitution of the defendant. It ensures that, the members not punished on mere allegation; requires proper investigation is carried out: eliminates the frivolous and vexatious allegation; makes the member liable to disciplinary action; offers to a member reasonable time to respond to the allegation; and allows the defendant to suspend such member to facilitate a fair inquiry without interference with the witnesses and evidence and to dispose of the disciplinary action. If any action taken by the defendant against its any member without following this due process, such action will be contrary to its constitution and thereby liable to be declared null and void.
13. In this case, the plaintiff was never informed of the allegations or charges against him before he was served with the letter suspending him from the membership on 21 March 2024. The said letter merely refers to certain finding of HLB report to justify the suspension. There is nothing to show that, an investigation was carried out based on the finding of HLB report. The plaintiff, as mentioned above, relied on **Anand Sami Kumar v Praveen Kumar Bala** (supra) and refuted the HLB report whilst denying his involvement in the transactions referred to in that report.

14. The scope of the HLB report is straightforward and it is evident from the following paragraph appears on the first page:

Our engagement was undertaken in accordance with the International Standard on Related Services (ISRS) 4400 applicable to agreed-upon procedures engagements. **The procedures performed were solely to assist you with the monitoring and improvement of the Temple's financial reporting process** and are summarized as follows; (Emphasis is added).

15. The procedure performed by the accountants in that process was undertaken in accordance with International Standard on Related Services (ISRS) 4400. It is not an audit report as mentioned by the accountant in the second last paragraph of the report. The purpose of such survey was to advise the defendant on the importance of adherence to the certain international standards in order to streamline the processes, reduce the errors and to improve overall efficiency of the financial reporting of that particular Temple. The accountant carried out review of certain receipts and bank deposits in accordance with that international standard and then reported their finding. The report does not inculcate the plaintiff.
16. Even if the HBL report inculpated the plaintiff, the defendant should not have suspended the plaintiff solely on those findings. The HBL report was available with the defendant since it was prepared on 8 July 2022. There was no reference to any conduct of the plaintiff in that report. If those findings related to the transactions that took place during the tenure of the plaintiff, how the plaintiff alone could be held liable? He would have been a member of Council of Management that consisted of many others too. However, the defendant waited for 20 months and decided only on 03 March 2024 that, the conducts of the plaintiff were detrimental to the interest of the defendant. In addition, the defendant waited for further 18 days and served its decision only on 21 March 2024 immediately after the plaintiff submitted his nomination to contest the election scheduled to be held on 31 March 2024.
17. The defendant was entitled even it was belated, to form an opinion on the conducts of the plaintiff based on HBL report. However, such opinion was not sufficient to suspend the plaintiff without following the due process in accordance with Clause 8 of the Constitution. The defendant should have immediately commenced a proper investigation to hold not only the plaintiff, but everyone else, who had allegedly been involved in such transactions, liable to disciplinary action. However, defendant hurried and suspended the plaintiff based on HLB report only. Few months later, the defendant filed the affidavit in opposition stating that there were other evidences against the plaintiff and those will be disclosed at the

direction of the disciplinary committee. It is clear that, the defendant had suspended the plaintiff and then looked for evidence against him in order to justify the suspension. The defendant unfortunately had put the cart before the horse. It should have been other way. The defendant should have investigated the allegations; commenced the disciplinary action and then suspended the plaintiff pursuant to Clause 8.2.2 of the Articles of Association.

18. The defendant had failed to follow the due process provided by its constitution when it prematurely decided to suspend the plaintiff on 3 March 2024, citing the finding of HBL report, without proper investigation. It must be stated here that, the court is seriously concerned about the allegations occurred in financial reporting of that particular Temple governed by the defendant. In the meantime, the court is equally concerned about the due process provided by the defendant's constitution which is based on fundamental principles of rule of law, natural justice and democracy that are practiced in civilized societies. The Constitution of the defendant does not permit to suspend the plaintiff or any member in general without proper investigation. Therefore I decide that, the decision taken by the defendant to suspend the plaintiff and other subsequent actions that followed were inconsistent with its constitution and unlawful. I further decide that, the plaintiff remained and still remains the member of the defendant. I also decide that, due to this unlawful actions, the plaintiff was prohibited from contesting the election that was scheduled to be held on 31 March 2024.
19. The next question is the declarations and the orders that this court can make in this case. A special note to be made on the declaration (e) mentioned above and sought by the plaintiff. The declaration (e) sought by the plaintiff is the declaration that, the elections of office bearers at the **AGM 2023** and **2024** of the defendant were held unlawfully; therefore their outcome is null and void.
20. The plaintiff submitted his nomination to contest for the post of Vice President – South-West at the election that was scheduled to be held on 31 March 2024 at the AGM 2024. The impugned suspension came in just few days prior to that election and the plaintiff was unable contest the election for that post. The impugned decision and the other subsequent activities are the only contentious matters in this application. However, the plaintiff is seeking a declaration nullifying election that was held in **year 2023** which is not the contentious issue at all in this matter.
21. In fact, the defendant raised this matter in paragraphs 22, 23 and 24 of its affidavit in reply. According to those paragraphs, the plaintiff contested in **year 2023** for the post of National President along with other candidate, Mr. Praveen Bala Kumar. The plaintiff lost the election to Mr. Kumar. The defendant also averred in those paragraphs that, the events of **year 2023** had already been dealt with by the High Court, Court of Appeal and even the

Supreme Court. However, the plaintiff moved the court to nullify the election held in **year 2023**. It does not seem to be a simple typographical error or an inadvertent act, for two reasons. Firstly, the plaintiff sought the same declaration in his both amended originating summons. The very first order the plaintiff sought in both amended originating summons is to suspend the outcome of the election held in **year 2023** Secondly, the plaintiff could have corrected it in his affidavit in reply, if it was a typo or an inadvertent act. However, the plaintiff did not respond to those averments, in his affidavit in reply.

22. Therefore, it is obvious that, the plaintiff deliberately omitted to respond to those averments. Accordingly, it appears that, the plaintiff deliberately and deceptively attempted to mislead the court and to obtain an order nullifying the election held in year 2023 which he lost to Mr. Praveen Bala Kumar. Furthermore, if the events of **year 2023** were dealt with by the High Court, the Court of Appeal and the Supreme Court as averred by the defendant in its affidavit in reply, the attempt of the plaintiff to bring the same to this court again is blatant abuse of the process of the court. The plaintiff surreptitiously attempted to get the election, which he lost, nullified by the court. The court does not condone this behavior, but strongly denounces the same.

23. In **Goldsmith v Sperrings Ltd [1977] 2 All ER 566**, Lord Denning said as follows at 574:

“In a civilized society, legal process is the machinery for keeping order and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men's rights or the enforcement of just claims. It is abuse when it is diverted from its true course so as to serve extortion or oppression; or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it. They will stay the legal process, if they can, before any harm is done. If they cannot stop it in time, and harm is done, they will give damages against the wrongdoer”.

24. The only reason for the plaintiff to seek to suspend the outcome of the election 2023 is that, he lost the election. His logic is, as it appears from the orders he seeks that, he lost the election so he can hire a lawyer and get it suspended. This is “millionaire influencer” attitude. It is an attempt to use the process of the court to achieve an improper end. The court wishes to emphasize that, there is no room for this type of attitude in the administration of justice system. The courts stand firm and committed to uphold the rule of law at any costs. The courts equally stand committed and firm to prevent abuse of its own process. The court cannot simply ignore this abuse, but it should intervene to stop it. Therefore, the court reprimands the plaintiff for his attempt to mislead the court and to abuse its process to achieve an improper end that is suspension of election held in year 2023.

25. Furthermore, the solicitors who drafted the pleadings on behalf of the plaintiff could not have been unaware of the fact that, the contentious facts in this proceedings are events that occurred after 21 March 2024. However, they placed those events of 2023 in the pleadings of the plaintiff and moved the court to get reliefs accordingly. They too, being the officers of the court, are responsible for plaintiff's misleading attempt which is also an abuse of the process of the court. The solicitors for the plaintiff breached their duty towards the court.
26. Likewise, the plaintiff seeks the declaration that, the election held at the AGM 2024 was unlawful and the outcome were null and void. The plaintiff has not adduced any evidence whatsoever to prove that the said election 2024 was rigged or its outcome was manipulated. Instead, the plaintiff in his founding affidavit stated in paragraph 23 that, the suspension without disciplinary action was meant to prevent him from participating **in a democratically held election**. It is obvious that, the plaintiff moved to nullify the election held in 2024 for the sole reason that, he was prevented from contesting that election due to the impugned suspension of his membership. I decide that a democratically held election cannot be declared null and void for the sole benefit of a single member, in the absence of any malpractice in the way it was held. Since, the declaration nullifying the elections of years 2023 and 2024 cannot be granted, the corresponding orders (a) and (b) suspending the outcome of those elections too cannot be granted by the court.
27. The plaintiff sought the cost on client/solicitor indemnity basis. There is number of cases that lay down the principles governing the indemnity costs. Needless to re-produce all of them here. The principle that follows from those authorities is that, the award of indemnity costs would only be considered in exceptional cases where the conduct of a party was reprehensible to a significant degree.
28. In this case, the defendant contravened its constitution by suspending the membership of the plaintiff without proper investigation and disciplinary action; the defendant delayed filling of the affidavit despite several adjournments; the defendant waited to serve the charges on the plaintiff and filed its affidavit on the following day; and most importantly the defendant filed a summons to strike out the plaintiff's action just few days before the date fixed for hearing of the originating summons and attempted to get the originating summons dismissed *in limine* without hearing. All these conducts prove that, the defendant acted in a manner that is reprehensible to a significant degree. This conduct permit the costs on client/solicitor indemnity basis in this proceedings. However, I decline to grant the costs on indemnity basis for the very reason that, the plaintiff blatantly attempted to mislead the court and abuse its process in order to achieve an improper end as discussed above.
29. For the reasons adumbrated above, I make the following declarations and orders:

- a. I declare that, the constitution of the defendant does not permit to suspend the plaintiff and any member in general without commencing disciplinary action.
- b. I declare that, the suspension letter dated 21 March 2024 and sent by the defendant breached its constitution.
- c. I declare that, the decision taken by the defendant on 21 March 2024 to suspend the plaintiff is null and void and of no legal effect.
- d. I declare that, the plaintiff remained the member of the defendant at all material times.
- e. I declare that, the plaintiff as the member of the defendant was denied his right to be a nominee for the office bearer position, participate and vote at the AGM of the defendant held on 31 March 2024 due to this unlawful suspension.
- f. I order that the suspension of the plaintiff from the membership of the defendant be uplifted with immediate effect.
- g. I dismiss the summons filed by the defendant to strike out this action as it is an abuse of the process of the court, and
- h. I further order the defendant to pay a summarily assessed cost in sum of \$ 2000 for this application.



**At Lautoka
07.04.2025**


U.L. Mohamed Azhar
Acting Judge

**Solicitors: Messrs. Patel & Sharma for the plaintiff
Messrs. Pillay Naidu & Associate for the defendant**