

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 8/2024
[2024] NZSC 43

BETWEEN ASHOKBHAI ROHIT
Applicant

AND MOHAN DAYA
Respondent

Court: Glazebrook, Ellen France and Miller JJ

Counsel: V E Casey KC and S D Barker for Applicant
A S Butler KC and P A Fuscic for Respondent

Judgment: 30 April 2024

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is granted.**
- B The application for leave to appeal is dismissed.**
- C The applicant must pay the respondent costs of \$2,500.**
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REASONS

[1] The application for leave to appeal concerns the internal governance of Yogi Divine Society (NZ) Inc (YDSNZ).¹

[2] YDSNZ's constitution formerly provided that its officers could be appointed by Swami Hariprasadj, the Spiritual Head of Shrihari Ashram, Sokhada, Taluka Baroda, India, or his successors.² He was also President of the Board of Trustees of the Shri Hari Ashram Trust (the Indian Trust).

¹ Incorporated in December 2001 under the Charitable Trusts Act 1957.

² This judgment refers to those involved in accordance with the parties' nomenclature agreement.

[3] Swami Hariprasadjı died on 26 July 2021. The applicant claims that a new President of the Indian Trust, Sadhu Premswaroopdas, has succeeded to Swami Hariprasadjı's powers to appoint the officers of YDSNZ. Sadhu Premswaroopdas is said to have exercised that power, appointing the applicant and others as officers of YDSNZ and removing the existing officers.

[4] The applicant contends that subsequent amendments to YDSNZ's constitution, which had the effect of ensuring that members control the appointment of its officers, were invalid, essentially for process reasons relating to the convening of the special general meeting at which they were adopted.

[5] The High Court and Court of Appeal held that the applicant had failed to show Sadhu Premswaroopdas had succeeded to the powers formerly held by Swami Hariprasadjı.³ That meant the appointments Sadhu Premswaroopdas made were invalid.⁴ Both Courts also concluded the amendments to YDSNZ's constitution were validly approved by its members.⁵

[6] The proposed appeal is particular to the parties and the YDSNZ constitution. It raises no issue of general or public importance.⁶ Nor does it appear that there may have been a substantial miscarriage of justice.⁷ Whether or not Sadhu Premswaroopdas was appointed President of the Indian Trust, nothing prevents the members of YDSNZ from changing its constitution. An overwhelming majority of its members (364 out of 390) participated in the special general meeting at which the changes were adopted. All of them voted in favour. The amendments do not preclude any member from following the spiritual leadership of Sadhu Premswaroopdas. They ensure rather that the YDSNZ will remain under the control of its members.

³ *Rohit v Daya* [2022] NZHC 2715 (Venning J) [HC judgment] at [56]; and *Rohit v Daya* [2023] NZCA 649 (Cooper P, Lang and Downs JJ) [CA judgment] at [57].

⁴ HC judgment, above n 3, at [56]; and CA judgment, above n 3, at [58].

⁵ HC judgment, above n 3, at [89]; and CA judgment, above n 3, at [90].

⁶ Senior Courts Act 2016, s 74(2)(a).

⁷ Section 74(2)(b).

[7] The application for leave to appeal is out of time by a few weeks. That delay was adequately explained and caused no injustice. The application for an extension of time to apply for leave to appeal is granted.

[8] The application for leave to appeal is dismissed. The applicant must pay the respondent costs of \$2,500.

Solicitors:
McVeagh Fleming, Auckland for Respondent