

*Indexed as:*

Sangam Educational and Cultural Society of B.C. v. Gounder

**IN THE MATTER of The Sangam Educational and Cultural Society  
of British Columbia**

**AND IN THE MATTER of The Society Act, R.S.B.C. 1979, Chapter  
390**

**Between**

**Sangam Educational and Cultural Society of B.C., Petitioner,  
and**

**Balrama Gounder, Murgessan Reddy, Yenkataiya Naidu, Govinda  
Samy, Cecil Chandirar, Lakshmi Bergland, Kuppa Reddy, Padma  
Sami, Naresh Kumar, Solappa Reddy, Ram Naidu, Bob Shui**

**Narayan, Yenket Reddy, Kaniappa (Ken) Reddy, Adi Narayan,  
Peter Vijay Naidu, Krishna Gounder, Chinaya Sami, Devendran  
Gounder, V.J. Archari, Padma Sami and Ram Lingam Gounder,**

**Respondents**

**And Between**

**Murgesan Reddy, Kuppa Reddy, Ram Lingam Gounder, Solappa Reddy,**

**Balrama Gounder and Kista Gounder, Petitioners, and**

**Sangam Educational and Cultural Society of B.C., Adi Narin  
Nair, also known as Adi Narayan, also known as Adi Narayan  
Nair, also known as Adi Nair, James Reddy, Muniappa Naidu,**

**Rudra Nand Swamy, Lognadan Rao, Wasu Naidu, Paras Ram Reddy  
and Kupp Swami Naicker, Respondents**

Vancouver Registry Nos. A903434 and A903501

[1990] B.C.J. No. 2778

British Columbia Supreme Court  
Vancouver, British Columbia

Spencer J.

Heard: December 13, 1990

Judgment: December 19, 1990

Counsel for the Petitioner: Richard C. Robinson.

Counsel for the Respondents: R. Brian Webster.

Counsel for the Petitioners: R. Brian Webster.

Counsel for the Respondents: Richard C. Robinson.

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SPENCER J.-- These petitions are brought to regularize the tangled affairs of the Society. It was incorporated in 1982 under the provisions of the Society Act R.S.B.C. [1979] Chapter 390. It has so far been successful enough to comprise approximately 575 members and to have acquired assets of approximately \$885,000. Unfortunately, by the time of its annual meeting on March 18th of this year, disputes among its members about how its affairs should be run led to the formation of two opposing factions in its ranks. As a result, the election at that meeting of its president, but not of its directors, was challenged, and by a re-count Mr. Adi Nair was declared to have been elected president over Mr. Gounder who had been declared the winner at the meeting.

Some criticism was directed by Mr. Webster to the manner of the re-count, particularly to the authority of those who conducted it. However, the evidence as it emerges from the affidavits is not conclusive enough for me to say the re-count was unauthorized. The minutes of the directors' meeting at which it was discussed are inadequate to decide if it was authorized to be done by the directors or not. I think however I do not need to pursue that matter further, other than to say that under the Society's by-laws it is the directors who have charge of the Society's affairs and not the Trustees. The trustees' role is limited to that of holding property on behalf of the Society.

After Mr. Nair was declared president following the re-count, he set about to alter the elected board by ousting those of its members who opposed him. That was purportedly done by passing a special resolution of the directors as provided for under by-law 23. It reads as follows:

- "Any member of the Board of Directors, before the expiration of the term of his office, may be removed by a special resolution of the Board passed by at least 3/4 majority of the vote cast at such meeting, notice of which specifying the intention for such removal had been given previously."

In place of those ousted directors, others favourable to Mr. Nair's views were substituted under by-law 21(d) which reads:

- "A vacancy occurring in the Board of Directors shall be filled in by a majority vote of members of the Board of Directors at any regular meeting. Such filling shall be from the list of current financial membership."

In my opinion there was no power to oust the directors in that way. Section 31 of the Society Act must govern in this case and it limits the way in which a director can be removed. It reads:

- "31.

A director may be removed from office by a special resolution and another director may be elected, or by ordinary resolution appointed, to serve during the balance of the term."

Special resolution is defined in Section 1 of the Act to mean a resolution passed in a general meeting by a majority of not less than seventy-five percent of the votes of the members of the society who are entitled to vote and vote in person or by proxy. Thus, a special resolution can only be passed by the membership and not by the directors.

Mr. Robinson submitted that the section should be read as if the word "may" is permissive only and that a society is free to adopt other ways of removing directors, as was done by by-law 23 in this case. With respect I do not think so. The purpose of the Act is to regulate the affairs of those societies that seek its benefit by incorporation under its provisions. The members are entitled to that protection, and one of the ways in which they are protected is by ensuring that the directors who are elected by the members can only be removed by the members. Were it otherwise, then one faction among the directors could remove all those directors who disagreed with its policies. That is what has happened here.

I appreciate that if the Act prevents the removal of dissenting directors by the remainder of the board the society's affairs may be deadlocked. That is a matter to be dealt with by the membership as a whole by removing and replacing directors under the power given them by Section 31 of the Act.

It follows from what I have said that I find by-law 23 of this society's by-laws to be void because it contradicts the limitation put upon the removal of directors by Section 31 of the Act. From that it follows in turn that the purported removal on April 19th, 1990 of some of the directors who were elected at the annual meeting on March 18th, 1990 was unlawful. They continue to be the directors of the society and those persons who were appointed by the rest of the board to replace them are not directors. A declaration will go to that effect so that the directors continue to be those who were elected on March 18th, 1990.

Mr. Webster made a further attack on the affairs of the society by arguing that the president and directors were entirely dismissed and replaced at a special meeting of the society held September 30th, 1990. In my judgment that was a meeting properly convened under the provisions of the Act. Unfortunately it was not wisely conducted. The requisition served under Section 58 of the Act listed among the items of business to be conducted a review of the behaviour of Mr. Nair as president. When the meeting convened, Mr. Nair insisted upon being its chairman. That led to prolonged discussion about the propriety of his acting in that role. Heated discussion lasted until after midnight and, according to some of the affidavits, the meeting became

too animated to permit the orderly conduct of business.

At about midnight, Mr. Nair therefore adjourned the meeting without the authority of any resolution to do so, and he and his supporters walked out. There was however a quorum left behind, consisting mostly of Mr. Murgesan Reddy's supporters. They voted for the removal and replacement of Mr. Nair as president and for a new board of directors.

Mr. Robinson drew my attention to by-law 16 which provides that the president shall preside at all annual, special and board meetings of the Society. He relied upon that for Mr. Nair's right to insist upon chairing the September 30th special meeting. In relying upon that by-law however, Mr. Nair took an unfortunately partisan approach to his duty as president. A chairman whose conduct is to be called into question at any meeting of the members of a society ought not to remain in the chair. He or she should step down in favour of a more neutral person. That follows directly from those authorities which show that it is improper behaviour on the part of the chairman of a meeting to use his position to prevent business of the meeting from proceeding. See *National Dwellings Society v. Sykes*, [1894] 3 Ch. 159 at 162 and *Gray v. Yellowknife Goldmines Ltd. et al.*, [1946] O.W.N. 938 at 945. In the case at bar it was clear at the meeting on September 30th, 1990 that a significant proportion of those in attendance objected to Mr. Nair presiding over business which was critical of his own performance. It would be difficult for him to keep an even hand in regulating the debate. By insisting upon the letter of by-law 16 he acted unjustly towards all the members of the society. They were entitled to expect an even-handed conduct of the meeting's business.

The result of Mr. Nair's refusal was a disorderly meeting at which it was difficult to conduct the society's affairs. Mr. Nair therefore adjourned the meeting. He had no power to do that without the resolution of the members in attendance, see *Klein et al. v. James* (1986), 36 B.C.L.R. 42, sustained on appeal, October 21st, 1987, [1987] B.C.J. No. 2090, Vancouver Registry CA 006865. There may be an exception to that statement of the law where it becomes impossible for any business to be conducted, see Professor Wainberg's suggestion in his *Rules of Order* at page 79. Mr. Webster, for his clients, argued that even if there is, then the exception should not be recognized here because it was Mr. Nair's the heated debate and behaviour, if any, that lead to the difficulty in conducting business. Mr. Nair wanted to pass directly to the listed agenda without putting the question of who should be chairman to a vote. So it is argued that he cannot take advantage of any unruliness he caused as an excuse for exercising a power to adjourn without a resolution to do so. I have some sympathy with that argument. The history of this society in 1990 and the need for three attempts before Mr. Nair and the directors wrongly appointed by the remaining board would respond to a request for a special general meeting of the

society's membership show an inclination to conduct its affairs in disregard of the wish of the members. However, Section 86 of the Act, under which Mr. Webster's clients seek relief, gives the court a discretion about the relief it will order. Here, although in my view of the evidence it was Mr. Nair's conduct of the meeting that caused the need for any adjournment, when he walked out most of those attending left with him. It is true that a quorum remained and that as a matter of law that quorum could elect its own chairman and validly continue the business of the meeting. See Klein et al v. James (supra). But the fact remains that if the business that then followed is declared to be valid a large number of the society's members would be disenfranchised for that occasion. That number may well include members who are supporters of neither faction but who would have exercised their votes to influence the election of a new board of directors and a new president.

Under that circumstance, I think justice requires that the business conducted after Mr. Nair purported to adjourn the meeting of September 30th should not be validated.

The result will be that Mr. Nair remains as president. The board of directors continues as it was created by the election of directors at the March 18th, 1990 annual meeting. The trustees should understand that their official function is limited to the holding of property under by-law 29 (e). They have no other official function in the governance of this society. Any of the business of the society conducted by a board of directors since March 18th, 1990 other than the board then elected is declared to be invalid, but subject to the rights of any third party affected. The business conducted after the chairman's adjournment on September 30th, 1990 is declared to be invalid.

The petition brought in the name of the society was authorized by the invalid board. That resulted from Mr. Nair's unauthorized attempt to change the make up of the board from that which was elected at the March 18th meeting. He relied upon by-law 23 which I have now declared to be ultra vires. There is rather more to it than that error though. He took that step because he thought his will for the society was being frustrated by the presence of directors who represented a view contrary to his. He ran rough shod over the lawful wishes of some members of this society without regard to any democratic recognition of their right to dissent. In my judgment that is reason for recognizing that the petition in the name of the society was in fact unauthorized by the proper board. That petition will therefore be dismissed. costs of both petitions will be awarded to the petitioners listed in proceedings numbered A903501. The costs of that particular proceeding will be will be paid by the respondents in that proceeding. The costs of the petition brought in the society's name will be paid by Mr. Nair personally. Declarations and judgment will go accordingly.

SPENCER J.