

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Singh & Ors v Singh & Ors [2023] NSWSC 436

Supreme Court of New South Wales, Kunc J, 20 April 2023

Two factions of an incorporated association sought the Court's assistance in implementing an agreed plan to hold a meeting to elect office bearers.

Key words: Incorporated Association, New South Wales, Voting Procedure, Membership, Natural Justice

1. The North Shore Sikh Association of Sydney Incorporated (the Association) is an incorporated association.
2. Two factions of the Association claimed to have been elected as the management committee in 2022 at separate meetings, and the Association has since been in deadlock for more than 12 months.
3. After mediation, the factions reached an agreement as to the conduct of fresh elections with an independent chair.
4. This agreement was given effect by the making of consent orders by the Court.
5. The factions fell into a dispute about the implementation of the orders in two respects:
 - whether members of the Association, who were not trustees, (trustees being members who have donated or loaned at least \$2,000 to the Association) were entitled to vote for members of the board of trustees; and
 - whether the independent chair's decision not to accept certain persons as eligible to be nominated for office, or vote at the meeting, should be vitiated for failure to afford natural justice to the excluded persons, or as unreasonable in the *Wednesbury* sense.

Trustees Vote

6. The Court concluded that members were entitled, because the Orders identified each member present at the AGM and was not confined to trustees.
7. Under the constitution, the trustees annually elected the Board of Trustees. The Orders modified the constitution of the Association, and the question before the Court was whether the Orders modified the constitution for this special meeting.

8. The Court found that the constitution was modified as the Order referred to each member without distinction between members and members who are trustees, and constitutional legitimacy was to be conferred on both the newly elected bodies (the board of trustees and the management committee) by being the product of a universal franchise (i.e. not divided between members and trustees).

Membership and Natural Justice

9. Under the Orders the independent chair was to determine whether there were any further eligible persons as defined by the Order to attend the Association meeting.

10. The factions made submissions to the independent chair as to further eligible persons and the independent chair made decisions on their eligibility without giving any reasons for doing so.

11. The factions accepted that the independent chair had literally followed the procedure set out in the orders.

12. The Court considered two questions being:

- whether any obligation to provide natural justice had been impliedly excluded by the Orders; and
- whether a term that the decision could be challenged as unreasonable could be implied.

13. The Court decided that natural justice was excluded from the Orders and that there was no implied right to challenge an unreasonable decision.

14. The Court was persuaded by the precision of the Order for the arrangements, the short implementation period, and that the independent chair was to be the final arbiter to enable the meeting to proceed quickly.

15. The Court dismissed the motion.

COMMENT



The case offers an insight into the procedures contemplated in having an independent chair preside at a meeting to determine new office bearers to break the deadlock that had occurred.

This procedure provides a way of arranging a meeting without proceeding to a full trial of all the issues, which can be costly, time-consuming, and delayed.

An annexure to the judgment provides a copy of the Order that might be a useful starting point for those faced with crafting such an agreement.

VIEW THE CASE



This case may be viewed at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2023/436.html>

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