

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 107/2025

In the matter between:

DIVINE LIFE SOCIETY OF SOUTH AFRICA	**FIRST APPELLANT**
AROONA DEVI MANGREY N O	**SECOND APPELLANT**
JOGINDRA KISHNAPPA NAIDOO N O	**THIRD APPELLANT**
MAWALALL CHATROOGHOON N O	**FOURTH APPELLANT**
SACHIN HEERAMUN MAHARAJ N O	**FIFTH APPELLANT**
AROON SUKHNANDAN N O	**SIXTH APPELLANT**
KUMARASEN NAICKER N O	**SEVENTH APPELLANT**
LOGAN NAIDOO N O	**EIGHTH APPELLANT**
SANTOSH JAIRAM N O	**NINTH APPELLANT**
RAVEEN HARISUNKER N O	**TENTH APPELLANT**
KARUSHA HARILAL N O	**ELEVENTH APPELLANT**
ETHEKWINI MUNICIPALITY	**TWELTH APPELLANT**

and

AVINASH PARSHOTAM	
(ALSO KNOWN AS RISHIKUMAR SATYANAND)	**RESPONDENT/ CROSS-APPELLANT**

Neutral citation: *Divine Life Society of South Africa and Others v Avinash Parshotam* (107/2025) [2026] ZASCA 89 (24 June 2026)

Coram: SCHIPPERS, HUGHES and UNTERHALTER JJA and SERITI and STEYN AJJA

Heard: 25 May 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 24 June 2026.

Summary: Judicial review – voluntary association – disciplinary proceedings – interpretation of the organisation's constitution – composition of the Board in accordance with the constitution – principles of natural justice – adequacy of notice of the charges – right of confrontation and testing of adverse evidence– review of disciplinary findings and sanctions – declaratory relief absent a live dispute –remittal as an appropriate remedy.

ORDER

On appeal from: KwaZulu-Natal Local Division of the High Court, Durban (Sibiya J, sitting as the court of first instance):

1 Subject to paragraph 2 below, the appeal is dismissed with costs, including the costs of two counsel.

2 Paragraph 93 of the high court's order is amended to add the following after paragraph 1:

'The disciplinary proceedings brought by the first respondent against the applicant are remitted to the first respondent.'

3 The cross-appeal is dismissed with costs, including the costs of two counsel.

JUDGMENT

Unterhalter JA (Schippers and Hughes JJA and Seriti and Steyn AJJA concurring)

Introduction

[1] The first appellant, Divine Life Society of South Africa (the Society), is a voluntary association. Its objects are to conduct religious, spiritual, educational and charitable activities in South Africa in accordance with the Hindu religious and spiritual tradition derived from the teachings of Sri Swami Sivananda, who founded the Divine Life Society in India in 1936. The respondent, Avinash Parshotam, also known by his monastic name of Rishikumar Satyanand (and to whom I shall refer as Mr Parshotam) is a devotee and renunciant member of the Society. Mr Parshotam was initiated into the Society, at the age of 17 years and thereafter became a renunciant. Upon becoming an inmate, to use the language of the Society's constitution, a renunciant and devotee renounces worldly life and

is required to observe chastity, obedience and poverty. He dedicates his life to obeying and propagating the religious teaching of the Society and fulfilling its objects. Since 2001, Mr Parshotam has lived in the Society's ashram (a Hindu spiritual monastery), and he has forsaken all material possessions.

[2] The Society is governed by a constitution (the Society's constitution), in terms of which it is managed and controlled by the Board of Management (the Board). The second to tenth appellants are members of the Board and are cited *nomine officio.* On 2 March 2020, the Board notified Mr Parshotam of its intention to conduct an inquiry into certain of his alleged actions. Following his response to the complaints, a disciplinary hearing was convened on 21 March 2020. On 10 August 2020, the Board informed Mr Parshotam that it had 'reached its verdict'. It found him guilty on all seven charges preferred against him and invited him to submit written representations in mitigation for the purpose of determining an appropriate sanction. Mr Parshotam did so. By letter dated 28 August 2020, the Board advised Mr Parshotam that his membership of the Society had been revoked and that additional sanctions were imposed. He was further requested to provide the Board with a reasonable date from which he would be in a position to discontinue his residence. Mr Parshotam subsequently challenged both the Board's finding of guilt and the sanctions imposed upon him. For convenience, I shall refer to the latter as 'the sanctions decision' and to both decisions collectively as 'the impugned decisions'.

[3] Following the Board's decisions, Mr Parshotam instituted proceedings in the high court to review and set aside the impugned decisions. He also sought declaratory relief directing that any future disciplinary decisions of the Board comply with the basic principles of natural justice. The review was predicated upon a two-fold challenge. First, that the Board was not lawfully constituted, in terms of the Society's constitution, to take the impugned decisions because the

membership of the Board did not include renunciates. Second, the impugned decisions were taken contrary to the requirements of natural justice. The Society opposed Mr Parshotam's application, and brought a counter-application, seeking his eviction from the ashram.

[4] The high court upheld the review. It did so on the basis that the Board was improperly constituted when it took the impugned decisions in that the Society's constitution required that renunciates must serve on the Board and they did not do so. The high court accordingly reviewed and set aside the impugned decisions. The high court however declined the declaratory relief. It found that the principles of natural justice did not apply to the disciplinary proceeding brought by the Society against Mr Parshotam because they were not incorporated into the Society's constitution. Having reviewed and set aside the impugned decisions, the high court, in consequence, dismissed the Society's counter-application for the eviction of Mr Parshotam. The Society was ordered to pay the costs, including the costs of two counsel.

[5] The Society sought leave to appeal the order of the high court reviewing and setting aside the impugned decisions. Mr Parshotam brought a conditional application to cross-appeal. It was formulated thus: should the Society be granted leave to appeal, Mr Parshotam sought leave to cross- appeal 'those portions of the judgment relating to the applicability of the rules of natural justice' and the order refusing declaratory relief. The high court granted the Society's application for leave to appeal, as also Mr Parshotam's application to cross-appeal.

[6] The appeal before us raises the following issues. First, under the Society's constitution, was the Board lawfully constituted to take the impugned decisions (the composition issue)? Second, if not, do the impugned decisions nevertheless fall to be reviewed and set aside on the basis that the Society failed to observe the

principles of natural justice (the natural justice issue)? Third, if the Society's appeal is dismissed, was Mr Parshotam nevertheless entitled to the declaratory relief that he sought from the high court (the declaratory relief issue)? Fourth, if the Society's appeal is upheld, is the Society entitled to the orders it sought to evict Mr Parshotam from the Society's ashram (the eviction issue)?

[7] It was common ground between the parties that the review of the impugned decisions falls within the competence of the courts to review the exercise of powers by a private body under the standards laid down in *Turner v Jockey Club of South Africa*.[1] The disciplinary decisions of a private body may be reviewed by a court if they fail to accord with 'fundamental principles of justice' which include conformity with the private body's constitution and adherence to the rules of natural justice. I turn first to the composition issue.

The composition issue

[8] The Society's constitution provides that there shall be a Board of Management. The Board is invested with wide powers. Among these is the responsibility to maintain discipline, judge the spiritual suitability of any member of the Society, to accept a candidate for 'spiritual or religious discipleship', and to expel from the Society any spiritual or religious disciple. Clause 5 of the Society's constitution sets out the composition of the Board and the criteria for membership of the Board. Clause 5 reads as follows:

'BOARD OF MANAGEMENT: COMPOSITION & CRITERIA

(a) There shall be a Board of Management consisting of at least five and not more than eighteen members.

(b) The Board of Management shall comprise the Spiritual Head, Chairman, Secretary, Treasurer and other ordinary members, who except in the case of the Spiritual Head shall hold office for a period of at most two years, being eligible for re-election at the expiry of the said

[1] *Turner v Jockey Club of South Africa* 1974 (3) SA 633 (A) at 646 D-H. See also *Theron en Andere v Ring van Wellington van die NG Sendingskerk in Suid-Afrika en Andere* 1976 (2) SA 1 (A) at 21F-23C.

period. Except in the case where the Spiritual Head decrees otherwise, no person who has served on the Board of Management and then left for any reason whatsoever, will be eligible for re-election at any subsequent meeting of the Board of Management.

(c) All further successive members of the Board of Management shall from time to time as occasion arises, whether by death, resignation or disqualification be appointed by the Board of Management.

(d) No person shall be appointed a member of the Board of Management unless:

(i) he is a disciple of SRI SWAMI SIVANANDA and adherent of the principles and teachings of the Divine Life Society and

(ii) he complies strictly with the codes of conduct and of discipline expected of an inmate of the said Ashram and unless he abstains wholly from smoking, the consumption of alcoholic liquor and from gambling.

(iii) he/she follows a strict vegetarian diet, meditates for at least half an hour daily, keeps a daily spiritual diary, and in the case of a householder, conducts home Satsang on a daily basis.

(iv) he/she agrees to render at least Five (5) hours of active service every week to the Society. In addition it is compulsory to sell an agreed value of books printed by the Divine Life Society of SA, on a monthly basis.

(v) (with the exception of the Spiritual Head) he/she is less than 65 years of age.

(vi) He/she agrees to practise and observes the rules of Brahmacharya.'

[9] On a plain reading, Clause 5, puts certain matters beyond doubt. First, it specifies the permitted number of members of the Board: at least five and not more than eighteen. Second, the Board is composed of office bearers, being the Chairman, Secretary, Treasurer and ordinary members. Third, to be appointed a member of the Board, a person must meet a number of criteria. Of relevance are the criteria that a member must comply strictly with the codes of conduct and discipline 'expected of an inmate'; and that '. . . in the case of a householder [he or she] conducts home Satsang on a daily basis'. The term 'householder' is not defined in the Society's constitution. It must therefore be given its ordinary meaning – a layperson or non-monastic person who maintains a secular life, family, and career, while practising the Hindu faith and supporting the ashram.

What these provisions necessarily imply is that a member of the Board need not be an inmate, but must conform to the discipline expected of an inmate. And further, that a householder may be a member of Board.

[10] It follows from the criteria for membership of the Board that its members may be an inmate (and hence, on the understanding of the parties, a renunciant) because an inmate is plainly required to comply with the codes and discipline expected of an inmate. But membership is not confined to inmates. Householders may also qualify since the criteria provide for the daily conduct required of householders. In sum, membership of the Board may include both householders and inmates (that is, renunciants) provided the criteria for membership are met. This was not disputed by the parties.

[11] What was much contested was the constitutional relevance of the appendices to the Society's constitution. Clause 33 reads as follows:

'APPENDICES

The following appendices are supplementary attachments to this constitution:

Appendix 1: Important decisions taken by the Board of Management (ongoing)

Appendix 2: Restrictions on named persons.'

Appendix 1 lists important decisions taken by the Board of Management of the Society prior to the Society's constitution being signed on 1 September 2007 and coming into effect on that date. Two such decisions (the composition decisions) are of particular importance, and read as follows:

'1 March 2003	● The Board of Management should consist entirely of full-time renunciants. (Minimum of 5 and not more than 8) (Amended on 15 March 2003 and August 2007)
	● Nothing is to be left in Swamiji's room after Swamiji's passing
15 March 2003	● The Board of Management will comprise both householders and renunciants.'

[12] The primary submission of Mr Parshotam is that the decision of 15 March 2003 (the renunciant requirement) requires the Board to comprise *both* householders and renunciants, and that the renunciant requirement forms part of the Society's constitution. And hence, if the Board does not satisfy the renunciant requirement, it is not composed in conformity with the Society's constitution. The Board, it is contended, was not so composed when it took the impugned decisions. As a result, the Board had no competence to take the impugned decisions, and they must be reviewed and set aside. The high court upheld this submission.

[13] The Society disagrees. It contends that the appendices form no part of the substantive content of the Society's constitution, and hence, the renunciant requirement does not regulate the constitutional composition of the Board. In the alternative, the Society submits that if the composition of the Board had to satisfy the renunciant requirement, on the facts, it did so.

[14] The resolution of the composition issue is a matter of interpretation. And the principles that we apply to interpret the Society's constitution are well understood: the unitary exercise of giving meaning to the Society's constitution by recourse to text, context and purpose. The constitutional status of the appendices is governed by Clause 33. The appendices are described as 'supplementary attachments to this constitution'. What this description does not make clear is how the appendices supplement the Society's constitution. They may do so by adding substantive provisions to the constitution, and in this sense supplementing the constitution. A different interpretation is that Appendix 1 simply records the historical decisions that were made, prior to the Society's constitution coming into force, to provide context for the interpretation of the constitution and guidance for the Society's future governance. On this interpretation, Appendix 1 is supplemental in that it offers guidance so that those charged with the application of the Society's constitution would understand in the

future how the Society had been governed in the past. I will refer to the first of these interpretations as the substantive interpretation and to the second as the guidance interpretation.

[15] The substantive interpretation has the following difficulties. First, many of the decisions listed in Appendix A do not contain content that can be understood to warrant constitutional entrenchment. For example, decisions were taken that certain named persons should not work or live in the ashram, and others should not be permitted to come back to the ashram. It was also decided that upon the Swamiji's passing, no tributes should be solicited. Many of the decisions concern very specific matters and persons, some of a purely historical nature, that do not reference how the Society is to be governed, but rather the decisions taken in execution of that governance. Certain decisions, by contrast, are of a constitutional kind, and in particular the composition decisions, recited above.

[16] The difficulty is this. Either Appendix 1 & 2 form part of the substantive content of the Society's constitution or they do not. Clause 33 cannot be read to mean that certain of the decisions, but not others, recorded in Appendix 1 & 2, are incorporated in the constitution. Once this is so, many of the decisions in Appendix 1, and all of the restrictions of named persons listed in Appendix 2, are simply not plausible candidates for incorporation in the constitution because they are not provisions relevant to the framework of constitutional governance of the Society.[2]

[17] Second, even the composition decisions are problematic for the substantive interpretation. The decision of 1 March 2003 requires the Board to consist entirely of full-time renunciants, with a minimum of five and not more than eight

[2] A similar conclusion was reached (*Obiter)* in *Bissoon v Divine Society of South Africa and Others* 2025 JDR 2331 (KZP) para 50.

renunciants. These provisions are inconsistent with Clause 5 of the Society's constitution which permit householders to be members of the Board, and stipulate that the Board may not have more than eighteen members. If the decision of 1 March 2003 was to form part of the Society's constitution, this would give rise to irreconcilable contradiction of a kind not readily to be imputed to the framers of the Society's constitution. And if the decision of 1 March 2003 has been overtaken by the decision of 15 March 2003 and the Society's constitution (as the language of the decision indicates), then there would be no reason to incorporate it in the Society's constitution as a substantive provision. Nor, for the reasons given, can the decision of 15 March 2003 constitute a substantive supplementation to the Society's constitution, when the decision of 1 March 2003 is a supplementation of a different kind because of its evident redundancy.

[18] For these reasons, the substantive interpretation cannot hold good. Mr Parshotam ventured an alternative submission, should we reject the substantive interpretation of the composition decisions. The composition decisions constitute resolutions of the Board, and Clause 33 gives ongoing efficacy to this resolution, once the Society's constitution was of force and effect. This construction cannot prevail. Under the Society's constitution, resolutions are passed at a quorate meeting of the Board by majority vote (Clause 18 read with Clause 20). An amendment of the Society's constitution requires a resolution of the Board 'meeting unanimously' (Clause 34). This language indicates that the provisions of the Society's constitution are entrenched, whereas ordinary resolutions are passed by way of a majority vote at a meeting of the Board.

[19] The distinction between the entrenched provisions of the Society's constitution and the ordinary resolutions of the Board does not easily permit of the composition decisions having ongoing efficacy as resolutions. First, it would mean that an ordinary resolution can qualify a constitutional provision as to the

composition of the Board by stipulating that the Board must comprise both householders and renunciants. This is repugnant to the entrenched status of the provisions of the Society's constitution and the constitutionally specified basis upon which a constitutional provision may be amended. Second, this construction would not overcome the problem of contradiction. It would entail that the composition decision of 1 March 2003 was given life after the Society's constitution came into force, even though its terms indicate that it was amended by the composition decision of 15 March 2003, and the Society's constitution itself. And if it was given a fresh lease of life, it would contradict the content of Clause 5 of the Society's constitution.

[20] It follows that the substantive interpretation cannot prevail. And nor can Mr Parshotam's alternative construction. Clause 33 has a different function. It records the history of decision-making by the Board, and in particular the history when the Society was led by the Spiritual Head. As the Society's constitution makes clear (Clause 4), there was to be no Spiritual Head beyond the Spiritual Head's lifetime. The Society's constitution was formulated to govern after the passing of the Spiritual Head. Clause 33 is a historical record of significance to guide the governance decisions of those who come to hold office under the Society's constitution. It is supplemental as guidance but not constitutionally binding. Thus, the Society's constitution permits renunciants and householders to be members of the Board. Appendix 1 indicates that in the past renunciants have played an important role as members of the Board. And this is a guide as to how the Board should be composed, but it is not a constitutional requirement that it be so. The guidance interpretation must prevail.

[21] Thus, the impugned decisions do not fall to be reviewed and set aside by reason of the failure of the Board to adhere to the composition decision of 15 March 2003. The high court was incorrect to find that this decision was an

obligatory constitutional requirement to permit the Board to take the impugned decisions. I therefore do not need to consider the alternative contention of the Society that the Board, as a matter of fact, did comprise both householders and renunciants. Even if it did not, there is no basis to hold that for this reason the Board was not constitutionally constituted.

The natural justice issue

[22] The Society, in its submission before this Court, accepted that the disciplinary proceedings brought by it against Mr Parshotam were required to comply with the rules of natural justice. At a high level of generality, Mr Parshotam's counsel were in agreement with this proposition. As we shall see, the divergence between the parties arises from the application of the rules of natural justice in this case, rather than the recognition that these rules are an implied part of the Society's constitution.

[23] The high court came to a different conclusion. It found that the Society is a religious association that may exclude the rules of natural justice from its constitution. This may be done expressly, or 'if there is an apparent intention in the constitution not to be bound by the rules of natural justice.' The high court found that the rules of natural justice were not incorporated in the Society's constitution, and considered this decisive of the declaratory relief sought by Mr Parshotam. The high court framed its conclusion in this way: 'Given the finding that the rules of natural justice were not incorporated by the parties into the constitution, and to avoid doctrinal entanglement in religious matters, the declaratory relief is *not applicable*'. (my emphasis).

[24] The high court concluded that the rules of natural justice were excluded from the Society's constitution. That the rules of natural justice were not expressly incorporated in the Society's constitution does not necessarily imply

that they were excluded. They may have been tacitly agreed upon. That is a question of interpretation. The court said that it would be improper for the rules of natural justice to be incorporated by the court. That is a matter of no small complexity because it engages the question whether the principles of what has been styled private administrative law can be excluded by the express terms of a contract.[3] But before this issue is reached, the prior question is whether the Society's constitution tacitly adopted the rules of natural justice.

[25] In *Turner v Jockey Club*,[4] this Court recognised 'the expressed terms of the agreement by which any or all of the fundamental principles of justice may be excluded or modified.' Whether this recognition may warrant further consideration, by reason of the horizontal application of the Constitution or otherwise, is a matter we need not engage. The parties agreed that the Society's constitution did permit of the application of the rules of natural justice to its disciplinary proceedings. I consider that agreement to be well-founded for the following reasons.

[26] Clause 6 of the Society's constitution reads as follows:

'RESPONSIBILITIES OF THE BOARD

The Board of Management shall at all times be directly responsible for the maintenance of discipline and standards of morality and of behaviour at or in any or all of the institutions, agencies, Ashrams, clinics, hospitals, canteens, Dharmashalas, shrines, temples, places of worship, meeting places and any and all other establishments of or conducted under the aegis of the Society and among the members of the Society, and shall be the judge of the spiritual suitability of any employee or member of the Society and it shall have power:

(i) to accept or to reject any candidate for spiritual or religious discipleship and to expel from any of the establishments of the Society of whatsoever nature any spiritual or religious disciple;

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[3] C Hoexter and G Penfold *Administrative law in South* Africa 3rd ed at 164.
[4] Ibid at 646B.

(ii) to forbid or to permit any person whomsoever whether a member of the Society or not, to attend any meeting or gathering of whatsoever nature held, or conducted by the Society; and the Board of Management shall not be obliged to give any reason whatsoever for any decision it may take by virtue of the powers hereby conferred upon it.'

[27] The Board enjoys the powers to judge spiritual suitability and to expel any spiritual or religious disciple, which plainly includes a renunciant. We were reminded by counsel for the Society that although he accepted that the rules of natural justice were of application to the Board's disciplinary proceedings, these rules must be flexibly and appropriately applied, given that the Society is a religious and spiritual organisation, and the Board is invested with the power to judge spiritual suitability. Deference to the exercise of this power is thus, he submitted, warranted.

[28] The express exclusion of the duty to give reasons 'for any decision it may take by virtue of the powers hereby conferred upon it' was emphasised by the high court in its reasoning. However, some caution should be exercised. First, the provision is ambiguous as to which powers are being referenced: the powers that are specifically conferred as set out in subparagraph (ii) of Clause 6, or all the powers of the Board in Clause 6, or even all the powers of the Board under the Society's constitution that give rise to a decision. I am inclined to give a narrow construction to the exclusion of the duty to give reasons because the powers conferred on the Board are varied. A decision of the Board to exclude a member from a gathering (one of the specific powers granted in terms of Clause 6 (ii)) is very different from the power to expel a renunciant from the Society. If a wide exclusion was intended to extend to all powers of the Board, this would have been made clear.

[29] Second, and whatever the breadth of the exclusion of the duty to give reasons under the Society's constitution, the more important consideration is this.

The framers of the Society's constitution chose to make specific mention of the exclusion of the duty to give reasons. This is one aspect of procedural fairness. If the framers intended to exclude all the rules of natural justice, there would have been no need to provide a specific exclusion of the duty to provide reasons. That the framers of the Society's constitution expressly excluded one incident of the rules of natural justice tends to support an interpretation that they tacitly included the rules they did not specifically exclude.

[30] Furthermore, as I have observed, the powers invested in the Board are varied. The absence of express reference to the rules of natural justice makes sense. It would be an exercise of considerable complexity to fashion a regime of rules of natural justice tailored to each specific power enjoyed by the Board. And such an exercise would be unnecessary since the rules of natural justice, applied to a voluntary association, are of application with a proper appreciation of the nature of the association and the kind of power in question. But it is difficult to impute to the framers of the Society's constitution the intention that in exercising drastic powers, such as the power to expel a renunciate, the Society would not be committed to a fair process before deciding to expel a renunciate who has, by definition, given up much to serve the Society.

[31] I find for these reasons that, in respect of the exercise by the Society of its power to expel a renunciate, the Society's constitution has tacitly adopted the rules of natural justice. This accords with the Board's conduct. As we shall see, the Board sought to give Mr Parshotam an opportunity to be heard in the proceedings brought against him. The Board did so, not as a matter of grace and favour, but rather because it appreciated the gravity of the powers it sought to exercise. To the extent that the high court held otherwise, it fell into error.

[32] I consider next whether the Society failed to apply the rules of natural justice in the proceeding brought against Mr Parshotam that resulted in the impugned decisions. An important distinction must be made at the outset. It is for the Society to judge spiritual suitability and whether a renunciate continues to fulfil his obligations. We are not here engaged upon an enquiry as to the correctness of what the Society decided, but how it did so. Mr Parshotam's founding affidavit and supplementary founding affidavit set out his grounds of review, and in particular, the respects in which the Society failed to adhere to the rules of natural justice in the proceedings taken against him.

[33] Mr Parshotam's complaints fall into two categories. The first is that the members of the Board were the investigators and prosecutors of the complaints; they presided at the hearing and made the impugned decisions. The same members of the Board could not discharge all of these functions without compromising the impartiality of the Board in adjudicating the complaint against Mr Parshotam. Although this attribute of procedural fairness is often referred to by the phrase *nemo iudex in sua causa* (no one should be a judge in their own cause), I prefer here plain English. The Board, in deciding the complaint against Mr Parshotam, and any sanction that may result, had a duty of impartiality. The duty was not placed in issue. How the Society was required to discharge that duty was a matter of dispute.

[34] Second, Mr Parshotam levels the following complaints against the process that the Board adopted:

(i) The Board failed to make clear the charges to be preferred against Mr Parshotam before the hearing.

(ii) The Board did not lead any evidence at the hearing, and hence there was nothing for Mr Parshotam to cross-examine and no case to answer.

(iii) In making the sanctions decision, the Board relied upon 'historical misdemeanours' which were never put to Mr Parshotam.

I shall for convenience refer to these complaints as the *audi* complaints.

[35] I turn to consider, in the first place, the *audi* complaints, and I begin with the alleged failure to make clear the charges preferred against Mr Parshotam. In a letter of 2 March 2020, the Board gave Mr Parshotam notice of an inquiry it intended to undertake into certain 'recent actions' of Mr Parshotam, details of which were set out in the letter. Mr Parshotam responded in a letter dated 6 March 2020 in which, among other matters, he provided his factual response to the complaints made against him. On 13 March 2020, the secretary of the Board wrote to Mr Parshotam. The Board denied Mr Parshotam's request to enjoy legal representation at his hearing and that an independent chair should preside. The Board invited Mr Parshotam to a hearing on 21 March 2020.

[36] The minutes of that hearing form part of the record, as also the hearing framework that was used by the Board to conduct the hearing. The founding affidavit also contains 'the plea' that Mr Parshotam submitted to the Board at the hearing. Mr Parshotam at the hearing, after raising certain issues concerning the capacity of the Board to act, specifically raised his complaint that, although he had provided a response to the complaints tabled in the Board's letter of 2 March 2020, he had not been given notice of the specific charges he was to face, nor which rules he had broken. What transpired at the hearing was that the Board put to Mr Parshotam as charges the very matters that were raised in the Board's letter of 2 March 2020. Mr Parshotam responded by way of reading out the contents of his plea and submitting it to the Board.

[37] Mr Parshotam was given an opportunity to respond to the charges preferred against him at the hearing. His plea contains his answers to the complaints,

originally raised against him in the Board's letter of 2 March 2020. He was thus given a hearing, of a kind, on the charges that the Board sought to level against him. But the gravamen of the specification complaint lies elsewhere. In a disciplinary hearing of such gravity, a renunciant, in the position of Mr Parshotam, facing the possibility of expulsion from the Society, was entitled to know, in advance, the charges he was to face. Mr Parshotam had responded to the Board's initial letter of complaint.

[38] Even if the Board considered that nothing of that response warranted any change to the charges to be preferred, nevertheless Mr Parshotam should have been given adequate notice of the precise content of the charges he was to face, so that he could properly prepare for the hearing. That he anticipated that the charges would replicate the original complaints raised in the letter of 2 March 2020 (because he alleged that the Board had already made up its mind) does not alter the detriment. Fairness requires that the Board specify in advance, with sufficient particularity, what charges Mr Parshotam must meet. The Board did not do so. It acted unfairly and breached this basic rule of natural justice. I observe that it matters not whether proper specification would have made any difference. The observance of the rules of natural justice is not negated by what is sometimes referred to as the no-difference principle. Mr Parshotam's complaint, on this ground, is well-founded.

[39] I turn next to the complaint that the Board did not adduce evidence to prove the charges it had preferred, and hence there was nothing upon which Mr Parshotam could exercise his right to cross-examine. I recognise, as the Board submitted, that the disciplinary proceedings of the Board need not replicate the procedures adopted in a court of law. There is no requirement to adopt adversarial procedures; a less structured inquisitorial approach may be followed. However, charges are not self-proving. They must be proved by the complainant, in this

case the Society. The evidence may be documentary, by way of oral testimony, or both. But it is not fair to have put the charges to Mr Parshotam and then require him to rebut the charges, without the evidence that is relied upon to prove the charges.

[40] There are three related difficulties. First, a renunciant, in the position of Mr Parshotam, facing charges the Board considered serious infractions, was entitled to confront the witnesses who provided evidence against him. And if the evidence is documentary in nature, to be able to challenge it. This right of confrontation is basic to what it means to be fair and is of great utility for those who must ultimately adjudicate and make findings of fact. Second, the procedure adopted by the Board cast an onus upon Mr Parshotam to rebut the charges, without the evidence adduced in substantiation of these charges. The complainant must adduce evidence before a respondent is invited to put up his case. The Board adopted a procedure to reverse the onus of proof. This too is unfair. Third, the invitation to Mr Parshotam to exercise his right of cross-examination is entirely illusory. What is the evidence relied upon to prove the charges and which witnesses will give this evidence? Without this, what is there to cross-examine?

[41] The Board, in each of these dimensions, failed to adhere to the rules of natural justice. Mr Parshotam was entitled to know the evidence upon which the Board relied to prove the charges. There need be no formality as to how the evidence is adduced. But without it, Mr Parshotam was deprived of his right of confrontation. This too breached essential rules of natural justice.

[42] Finally, in the sanctions decision, the Board relied upon what it called ‘historical misdemeanours’. It considered these to be aggravating circumstances. Here too, there was a failure of natural justice. The Society submitted that the Board considered conduct of Mr Parshotam dating back to 2017, and his

expulsion from the Board in 2019, which he did not contest. That did not avoid the obligation to put this conduct to Mr Parshotam, in advance of the imposition of a sanction, offer some account as to why the conduct constitutes an aggravating circumstance relevant to sanction, and allow Mr Parshotam to respond. This is all the more so, given the sanction of expulsion from the Society that was under consideration by the Board. Here too fairness was not observed.

[43] It follows that the *audi* complaints are well-founded. Basic aspects of the rules of natural justice that were of application under the Society's constitution to disciplinary proceedings of the kind brought against Mr Parshotam were not observed. The impugned decisions were not fairly taken, and they must be reviewed and set aside.

The duty of impartiality

[44] Mr Parshotam complains that the Board did not comply with its duty of impartiality. The affidavits explain that the same members of the Board were responsible for investigating the complaint against Mr Parshotam, prosecuting it, and adjudicating the matter. He submits that the members of the Board cannot carry out these three functions and comply with their duty of impartiality.

[45] A respondent in disciplinary proceedings, in the position of Mr Parshotam, is entitled to require those responsible for adjudicating the matter to approach their task with an open mind. The test, formulated by this Court,[5] is 'conspicuous impartiality', that it to say, there is no requirement to show that the adjudicator actually lacks impartiality, rather the test is whether there is a reasonable suspicion that this is so.

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[5] *BTR Industries South Africa (Pty) Ltd v Metal and Allied Workers' Union* 1992(3) SA 673 (A) at 694 G-H.

[46] I am mindful of the prudent observations of this Court in *De Lange v Presiding Bishop of the Methodist Church of Southern Africa for the time being and Another (De Lange)*,[6] that the disciplinary proceedings of a private association may be undertaken by office bearers of the association, and need not be delegated to outside parties. That is true too of the Society. But if the disciplinary proceedings are to be kept 'in house', there must be proper consideration given to the manner in which such proceedings are to be conducted to ensure that the duty of impartiality is secured.

[47] The difficulty that the Society faces is this. It was open to the Board to conduct the disciplinary proceedings against Mr Parshotam using the members of the Board. However, the members of the Board could not all be engaged upon, or identify themselves with, the investigation, prosecution, and adjudication of the complaints against Mr Parshotam. I do not need to consider whether the assumption of these functions by all the members of the Board gave rise to actual partiality. It suffices that the members of the Board, some of whom were complainants and played a key role in the investigation of the charges against the Mr Parshotam, failed to differentiate these functions, and this gave rise to a reasonable suspicion of a want of impartiality. These members could not formulate the complaints against Mr Parshotam, consider his initial response, prefer the charges against him, prosecute them, and then sit as impartial adjudicators.

[48] Once members of the Board had a hand in supporting the complaints and the bringing of the charges, which they did, they had failed to insulate themselves from the adverse judgments that they had formed of Mr Parshotam's conduct. They could not then reasonably appear to bring an impartial mind to bear upon

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[6] *De Lange v Presiding Bishop of the Methodist Church of Southern Africa for the time being and Another* [2015] ZACC 35; 2016 (1) BCLR 1 (CC); 2016 (2) SA 1 (CC) para 27.

the adjudication of the charges. This is a form of functional partiality. It does not mean that any member of the Board was in any respect actually biased. Rather, their assumption of all these functions in conducting the disciplinary proceedings ousted them from retaining the reasonable appearance of conspicuous impartiality in adjudicating the charges brought against Mr Parshotam.

[49] I do not venture upon how the Society may cure this defect of their process. The members of the Board may effect a division of labour to divide the responsibilities of investigation and prosecution, on the one hand, and adjudication on the other. Happily, we were informed that there are sufficient new members of the Board who now serve, and did not serve in 2020, so that this should be possible to do. There were some disputes before us as to the power of the Board to delegate certain of its disciplinary functions to independent outsiders. Whether that is possible need not detain us, given the division of functionality that can be effected among the members of the Board.

[50] What I conclude on this aspect of the matter is that the Board did not satisfy its duty of impartiality. A reasonable suspicion of partiality hung over the disciplinary proceedings, and hence the rules of natural justice were not observed. On this basis also, the impugned decisions must be reviewed and set aside.

The declaratory relief

[51] Mr Parshotam sought to persuade us, as he had the high court, that if the Society's appeal was not upheld, he should be granted the declaratory relief that the high court declined to grant. Mr Parshotam asks us to declare that the Board must comply with the basic principles of natural justice, and in particular that 'affected persons' must have fair prior notice of the allegations to be answered; fair prior notice of any decision that may be made against them; that a reasonable opportunity to make representations be given concerning such decision; and that

the disciplinary process be conducted by an impartial and independent decision-maker. Counsel for Mr Parshotam submitted that these are not academic issues. Rather, it was contended, the declaratory relief would ensure that, if Mr Parshotam were again subjected to disciplinary proceedings, he would not suffer unfairness, and the Board would know how to proceed.

[52] I do not consider that a proper case has been made out for the declaratory relief sought. Mr Parshotam has raised in his review a number of procedural irregularities that vitiated the fairness of the disciplinary proceedings brought against him. I have made findings as to the defects of process of those proceedings. I have no doubt that the Board, should it pursue further disciplinary proceedings against Mr Parshotam, will cure these defects. To the extent that the declaratory relief goes beyond the remit of the issues raised in the review, there is no warrant to decide abstract principles of fairness, devoid of the factual circumstances in which the Board may seek to bring disciplinary proceedings. The rules of natural justice are principles that must be applied in a manner that is responsive to the facts. Without the charges, the manner in which they have been brought, how the proceedings were conducted, and their likely consequence, declaring principles at a high level of generality has neither utility, nor is there a live controversy which they resolve. The high court was thus correct to decline to grant the declaratory relief sought by Mr Parshotam.

Conclusion

[53] Although the Society has prevailed on the composition issue, the order of the high court cannot be vacated because Mr Parshotam has succeeded on the natural justice issue. The Society's appeal is against the order of the high court. That order, to review and set aside the impugned decisions, must stand because Mr Parshotam's review is sustained, though by reason of my finding that the impugned decisions were not taken in conformity with the rules of natural justice.

Once that is so, the Society's eviction relief, seeking Mr Parshotam's eviction from the ashram, cannot be entertained. It follows that the Society's appeal must fail. So too, must Mr Parshotam's cross-appeal, for the reasons given.

[54] There remains one further issue that arises concerning remedy. The high court reviewed and set aside the impugned decisions. That was the order sought. We raised with counsel whether that order should not be supplemented, by the usual remedial consequence of a review – remitting the matter back to the Society. Although this review is one of a private association, remittal is a remedy that ordinarily reflects the limits of a court's intervention upon the decision-making of the party reviewed. That is the case in reviews of public bodies, and it should be all the more so in the case of a private association. Remittal of the matter back to the Society in no way binds it to bring the disciplinary proceedings afresh. The Society will decide how best to proceed, in the light of this judgment, and the passage of time. I consider remittal to be a proper supplementation of the order granted by the high court.

[55] As to costs, Mr Parshotam has been successful in respect of the review, and he is entitled to the costs of the appeal. The Society has been successful in having the cross appeal dismissed, and it is entitled to those costs. Two counsel acted for Mr Parshotam and the Society. The appeal warranted the employment of two counsel.

[56] In the result, the following order is made:

1 Subject to paragraph 2 below, the appeal is dismissed with costs, including the costs of two counsel.

2 Paragraph 93 of the high court's order is amended to add the following after paragraph 1:

'The disciplinary proceedings brought by the first respondent against the applicant are remitted to the first respondent.'

3 The cross-appeal is dismissed with costs, including the costs of two counsel.

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D N UNTERHALTER

JUDGE OF APPEAL

Appearances

For the appellant:	I Pilay SC with him I Veerasamy
Instructed by:	Cox Yeats Attorneys, Durban
	McIntyre van der Post Inc., Bloemfontein
For the respondent/ cross-appellant:	S Pudifin-Jones with her C J Moodley
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