



Employment Law

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SOUTH AFRICA

- Fair process beyond the workplace: Natural justice in discipline within a religious community



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Fair process beyond the workplace: Natural justice in discipline within a religious community

When we think of disciplinary hearings, we tend to picture the workplace: an employer, an employee and a body of law developed to hold the two in a fair process. Yet the demands of fairness are not confined to the conditions of employment. In *Divine Life Society of South Africa and Others v Avinash Parshotam* (107/2025) [2026] ZASCA 89 (24 June 2026), the Supreme Court of Appeal (SCA) confirmed that the principles of natural justice may govern the disciplinary proceedings of a voluntary association even where no employment relationship exists.

The judgment is significant because the relationship it examines is not one of employment. The appellant organisation is a voluntary religious association, and the respondent member a devotee who had renounced worldly life to live within its community. The court's reasoning nonetheless tracks the familiar architecture of disciplinary fairness, holding that a private body's power to expel a member is reviewable where it fails to accord with fundamental principles of justice, including conformity with the body's own constitution and adherence to the rules of natural justice.

This has implications for religious organisations, clubs, professional bodies and other associations in which members voluntarily assume commitments, and where alleged breaches trigger internal processes that closely mimic an employer's disciplinary machinery. The decision is a reminder that, in such settings, the substance of the obligation to act fairly may attach whether or not the parties expressly adopted it.





Factual background

The appellant is a voluntary association pursuing religious, spiritual, educational and charitable objects within a particular Hindu tradition. It is managed by a board of management, whose powers include maintaining discipline and judging the spiritual suitability of members. The respondent had been initiated as a youth and later became a renunciant, living within the organisation's ashram, having renounced worldly possessions and undertaken vows of chastity, obedience and poverty.

The board notified the member of an intended inquiry into certain of his actions, convened a hearing, found him guilty on all charges, and ultimately revoked his membership and imposed further sanctions, requesting him to vacate his residence on the property of the ashram. The member sought a review of both the finding of guilt and the sanction, contending that the board was not properly constituted and that the process offended natural justice; the organisation counter-applied for his eviction. The High Court set the decisions aside on composition grounds but held that natural justice did not apply and refused declaratory relief.



The SCA's reasoning and applicable law

The parties accepted, and the SCA affirmed, that the disciplinary decisions of a private body are reviewable where they depart from fundamental principles of justice. Although a constitution may expressly exclude or modify those principles, their absence from the written text does not entail their exclusion; they may be tacitly adopted as a matter of interpretation. The SCA found that, in relation to the power to expel a renunciant, the constitution had tacitly adopted the rules of natural justice, reinforced by the framers' decision to exclude expressly only the duty to give reasons, an exclusion that implied the retention of the incidents of fairness not so excluded.

The SCA identified several key aspects of fair process. A person facing serious charges is entitled to adequate advance notice of the precise charges, specified with sufficient particularity to allow proper preparation. The complainant must lead the evidence relied upon to prove the charges, whether documentary or oral, rather than reversing the onus by requiring the respondent to rebut unproven allegations. The respondent enjoys a right of cross-examination to test and challenge

the evidence against them. Aggravating matters relied upon in sanction must be put to the affected person, with an opportunity to respond. Finally, adjudicators owe a duty of impartiality, tested not by proof of actual bias but by whether there is a reasonable suspicion of partiality.

Measured against the above standards, the process fell short. Although the member had responded to an initial letter of complaint and read a plea at the hearing, he was never given advance notice of the specific charges. The SCA held that fairness required particularised charges in advance, and that this defect was not cured by his anticipation of their content, nor negated by any "no-difference" argument.

The board also led no evidence to prove the charges, leaving nothing to confront and effectively reversing the onus of proof, with the option to cross-examine non-existent. In imposing sanction, the board relied on "historical misdemeanours" without putting them to the member. On impartiality, the same members investigated, prosecuted and adjudicated. While internal proceedings are permissible, the failure to separate these functions created a reasonable suspicion of partiality.



The court's findings and order

The organisation prevailed on the composition issue. The SCA held that the board was validly constituted. Nevertheless, because the decisions were not taken in conformity with natural justice, they were reviewed and set aside, the appeal failed, and the eviction relief could not be entertained. It supplemented the order by remitting the matter, leaving the organisation free to decide whether to proceed afresh.

For clients, the lessons are practical. Associations wielding disciplinary power should assume that fairness applies unless clearly and lawfully excluded; charges should be particularised in advance; the case against a member should be proved by evidence that can be tested; aggravating factors must be disclosed before sanction; and those who investigate and prosecute should not also judge.

Aadil Patel and Nadeem Mahomed



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