

Saiva Maha Sabai of WA (Inc)

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Saiva Maha Sabai of WA Inc. Management Council DETERMINATION

NOTICE OF DISPUTE - received on 04/08/2021 (dated 03/08/2021) - SAIVA MAHA SABAI – BREACHES – DISCIPLINARY ACTION – CLAIM FOR DAMAGES

Applicant: Mr. Jeyakody Sivanpathakumar

Vs

Saiva Maha Sabai of WA Inc. (SMS)

Applicant advised via Email received on 25/08/2021 that *“I had in my notice of dispute extensively covered the nature of my disputes, So I am not going to submit any additional submission in support of my disputes. I do not intend to attend the hearing in person. I wish to say that all the documentary evidence in support of my disputes are in the custody of the Management Council. So I request you to carefully review those documents prior to make a determination on my disputes“.*

The Management Council (MC) discussed the Notice of Dispute received on 04/08/2021, Email received on 25/08/2021 and documents available in the custody of the MC at its meeting on Wednesday 25 August 2021 at 7:00pm at Ilankai Tamil Sangam Community Hall at 6 Third Avenue, Rossmoyne, WA 6148.

DETERMINATION –

1. The President, Secretary and the Treasurer implements MC’s decisions as per powers vested on them under SMS Rules 13, 14 and 15. While the claims are directed at two office bearers, MC’s position is that its decisions are generally unanimous and the responsibility for all the actions and/or communications by its office bearers rest with Saiva Maha Sabai of WA (Inc.) [SMS]. MC always acted in a legal and responsible way.
2. Applicant’s claims are fundamentally deficient, flawed and are addressed by the MC at different point in time, including at General Meetings. Given the obsolete and/or perceived nature of the matters raised time and time again, it is prudent to take this matter to the general meeting.
3. Most of Applicant’s claims been through State Administrative Tribunal, Supreme Court, and Consumer Protection (CP) and are settled.
4. SMS fulfilled its obligations [to CP] to update its Rules, resolve loan and governance issues, and register Dewasthanam Trust (DT) with ACNC and for GST exemption.
5. Resolution was carried to extend the term of 2018/19 MC at the 23rd AGM on 31/08/2019. SMS Rules 11 was applied to fill casual vacancies.
6. Annual report and Financial Statements were adopted at the 24th AGM (28/03/2021) without questions on the use of accountant, bookkeeper, or the auditors, and approved continuation of their services for another year.
7. Day-to-day management of the entities are the responsibility of the MC. The powers provided in SMS Rules 4 allow MC to do things necessary for it to carry out its objectives, including, but not limited to, engaging services of personnel for remuneration and entering into agreements with Governments.
8. Applicant was a member of the Kumbabisheham Subcommittee when the scope and budgetary decisions were made, including partial closure of temple during renovation. Subcommittee recommended works and the costings were approved at the SGM on 05/08/2018, and the SGM decisions are binding.

9. DT Trust issues were resolved by registering with ACNC, obtaining a new ABN on the advice of tax professional, and charging a market rent as per resolution at the SGM on 21/06/2020.
10. Federal Government grant of \$250,000 was spent on SGM [05/08/2018] approved works that are required to coincide with the Kumbabisheham 2020. As such no separate referral to a general meeting was required. At every possible circumstance, the members were notified of the developments through emails and postings on SMS web, including the financial and managerial achievements of SMS and DT.
11. Regarding legal actions, as an insured party, SMS and MC always put its best efforts to minimise insurance costs and any potential legal liability of inadvertent actions.
12. All the SGMs and the AGMs were conducted in accordance with the formal meeting procedures and relevant SMS Rules, particularly election process was carried in accordance with SMS rules 11 and 17.
13. Applicant can have access to SMS documents in accordance with SMS rule 25. To access these documents, MC requested the Applicant to sign a "Declaration Form" to assure that the request is directly connected with the Association's affairs as required by the *Associations Incorporation Act 2015*. As Applicant refused to sign the form, access was denied.
14. The legal actions at Supreme Court of WA and SAT by the Applicant were settled by mutual agreement of both parties [Applicant and SMS], no action to be taken in this regard.
15. Applicant's claims are by no means exhaustive and does not disclose a reasonable cause for any action to be taken. The Audited Annual Accounts and settlement of large long-term liabilities speak for the MC's fiscal management. MC always acted in the best interest of its members in accordance with applicable laws, including Section 21 (1) of the Incorporation Associations Act 2015.

Management Council concludes that the Association has conducted its affairs in accordance with SMS Rules and other relevant legislations, no further action is required.



Mr Kanagasabai Murugaverl
Secretary
Saiva Maha Sabai of WA (Inc.)

25 August 2021

Reference:

- a) Past AGM & SGM minutes from 2018
- b) A long list of emails from Jeyakody Sivanpathakumar (Applicant)
- c) Returning Officer (RO) email sent to Sivan on Tuesday, 20 April 2021
- d) Department of Consumer Protection letter dated 22/04/2020
- e) Letter from Lawyers Steenhof Brothers to SMS dated 15 June 2020
- f) Letter from Robertson Hales Lawyers to Steenhof Brothers dated 18 June 2020
- g) Kumbabisheham Subcommittee meeting minutes of 2018/19
- h) Annual report and supplementary information 2019/20 & 2020/21
- i) Supreme Court of Western Australia Minute of Consent orders dated 09 March 2021
- j) State Administrative Tribunal Orders dated 14 August 2020
- k) SGM Notice dated 31 July 2021
- l) SGM Remainder Notice dated 24 August 2021

MC DETERMINATION AND REASONS FOR DETERMINATION

1. Rules (Constitution) of the Saiva Maha Sabai

- 12/02/2019 - Consumer Protection (CP) approved the amended rules 2019.
- 03/02/2020 - Email received that a complaint was lodged with CP against the SMS.
- 22/04/2020 - Consumer Protection determination –
 - The change of rules in February 2019 was not passed in accordance with section 51 of the Act.
 - To adopt the updated rules in the future, the Association should give notice in accordance with the Act and pass a special resolution at a general meeting.
- 21/06/2020 – A Special General Meeting [SGM] was convened to pass a special resolution to “adopt the SMS Rules 2019 agreed on 10 Feb 2019”. However, the motion was not carried.
- 28/03/2021 - At the AGM, it was informed that to fulfill its obligations to Department of Consumer Protection, SMS Rules will be updated using constitutional lawyers. Members were requested to provide comments through emails and/or at a planned workshop.
- 08/08/2021 – Applicant submitted an alternative proposal (“Member’s Alternative Rules”) to amend SMS’s rules of association in accordance with Rule 22(1)(c) of the Current Rules. The MC considers there are number of issues with, and do not support, the Member’s Alternative Rules.
- 29/08/2021 - An SGM was convened to support a special resolution adopt “Management Council Proposed New Rules”.
- Applicant is still entitled to present at the SGM and propose an amendment to the motion himself to include his own set of rules instead of “**Management Council Proposed New Rules**” and put to members voting for a decision.
- SMS incurred significant cost in managing Member’s Alternative Rules in constitutional lawyer review and advice and additional postage to members.
- SMS fulfilled its obligations by updating its Rules, ensuring the adopted Rules include requirements set out in Schedule 1 of the Associations Incorporation Act 2015.**

2. Extension of Term of Office 2019/2020 & Loss of Quorum in May 2020

- 21/08/2019 - Extension of term was put to the 2019 AGM as a motion and approved unanimously - proposed by Mr. Aran Kandia and seconded by Mr. Rasa Subramaniam.
- When casual vacancies arise, SMS rules 11 was followed to fill the vacancies to maintain the quorum.
- Both these matters were part of legal actions taken through Lawyers Steinhoff Brothers (15/06/2020) and SAT (12/11/2019). Both legal actions were not advanced.
- At the 23rd Annual General Meeting [AGM] on 31/08/2019 a resolution was carried to extend the term of 2018/19 MC. SMS Rules 11 was applied to fill casual vacancies.**

3. Treasurer

- Treasurer position is being managed in the period in question (from 18 May 2020 onwards) in accordance with the following SMS rules: 4 (f), 4(g), 11(18), 15(2), 17(6), and 17 (8) (c).
- 24th AGM (28/03/2021) adopted 2019/20 Annual report and Audited Financial Statements without any question on the use of accountant, bookkeeper, or the auditors, and approved continuation of their services for another year.**

4. Mismanagement of Spiritual Affairs

- The claims by the Applicant are not correct and have been addressed by the MC at different point in time, including at General Meetings.
- MC’s overall performance was commended, and no issues were raised in the past three AGMs on spiritual affairs or appointment/removal of priests.
- Day-to-day management of the entities are the responsibility of MC. The powers provided in SMS Rules 4 allow MC to do things necessary for it to carry out its objectives, including, but not limited to, engaging services of personnel for remuneration and entering into agreements with Governments.**

5. Renovation and Major Maintenance Works to the Temple & Closure of the Temple for Regular Functioning during the Renovation Period

- 16/04/2018 - Kumbabisheham Subcommittee was formed in accordance with SMS rule 18 (20). Members are: Sabas Varagunathan - Chair; Dr Sivagurunathar Baskaranathan; Mahesan Namasivayam; Jeyakody Sivanpathakumar (**Applicant**); Rasarithnam Kuganathan; Subramaniyam Vanniyasinkam; Mahadevan Jayabalan; Raguragavan Ganeshasundaram, Seelan Jeyaseelan, and Mahesan Murugesan.
- 30/04/2018 - Kumbabisheham Subcommittee meeting #1 - Applicant attended as a member.
- 10/06/2018 - Kumbabisheham Subcommittee meeting #2 - Applicant attended as a member - where scope of works and budget including partial closure of the temple during the renovation period was agreed.
- Applicant was a member of the Subcommittee when the scope and budgetary decisions were made, including partial closure of temple during the renovation. Subcommittee recommended works and the cost estimates were approved at an SGM on 05/08/2018, and the SGM decisions are binding.**

7. New Sri Balamurugan Dewasthanam Trust 2 (Private Trust)

1. 03/12/2012 - SMS was registered for GST on 2 July 2001 and with ACNC on 3 December 2012, but not Sri Balamurugan Dewasthanam Trust [DT]. DT should have been registered with ACNC at the same time as SMS. Since 2012, if the turnover exceeded \$75,000, it is a requirement to be registered for GST.
2. 22/04/2020 - CP determination - Financial position and debts to the Trust - While no breach was identified, CP's view was that these financial arrangements and accumulation of a large debt needs to be resolved immediately.
3. 06/05/2020 - MC appointed Chris Stokes & Associates (Trust Lawyers) as consultants and sought advice. One of the main deficiencies was the suitability of the current Deed of Trust in meeting ACNC requirements. The action was informed to members.
4. 21/06/2020 - at the SGM, the adoption of the new Trust Deed was not supported, however, there was support for charging a competitive rent for use of SMS premises by DT from 1 July 2013.
5. **04/08/2020 - Trust related issues were resolved by registering the existing DT Trust with ACNC with a new ABN number on the advice of tax consultant Robert Campbell [From SMS Auditors Australian Audit], and charging a market rent from DT as per the resolution passed at the SGM on 21/06/2020.**

8. Special General Meeting - 21 June 2020

1. 21/06/2020 - SGM was conducted strictly in accordance with formal meeting procedure. Despite some members' disorderly behaviour and repeated interruptions, the meeting was conducted with fairness and good faith to all the 134 members attended the meeting. It was an excellent achievement to facilitate people to speak with their ballots and to prevail democracy despite being a difficult meeting with split community opinions. **MC concludes that the Association has conducted the business of the meeting in a fair and legally correct manner.**

9. Federal Government Grant

1. 31/08/2019 - Federal Government Grant of \$250,000 was discussed at the 23rd AGM on 31/08/2019 - General body *"requested the MC to arrange for signing the deed of agreement as soon as possible, spend the money on designated project and arrange grant acquittal by 30 June 2020"*.
2. 28/03/2021 - As part of the Treasurer's report following were presented at the 24th AGM:
 - a) Project Completion letter from Australian Government dated 17 June 2020;
 - b) Confirmation of Grant amount receipt emails dated 19 June 2020;
 - c) Grant variation schedule executed as deed dated 12 June 2020; and
 - d) Grant expenditure schedule of the 15 items and individual costs [used for grant acquittal].
3. **Federal Government grant of \$250,000 was spent mostly on SGM approved (05/08/2018) works that are required to coincide with the Kumbabisheham 2020. As such no separate referral to a general meeting was required.**

10. Transparency

1. MC's overall performance was commended, and no issues were raised on transparency or its performances in the past three AGMs.
 - a) 2017/18 AGM Minutes was adopted at the 22nd AGM on 23/09/2018.
 - b) 2018/19 Annual report was adopted at the 23rd AGM on 31/08/2019.
 - c) 2019/20 Annual report was adopted at the 24th AGM on 28/03/2021.
2. **At every possible circumstance, members were notified of the developments through emails and postings on SMS web, including the financial and managerial achievements of SMS and DT.**

11. Legal Actions Faced by Saiva Maha Sabai

1. 22/04/2020 - CP determines that no further action required regarding a complaint made against SMS.
2. 14/08/2020 - Applicant settled for an agreement with SMS to a complaint he made at SAT.
3. 18/06/2020 - SMS Lawyers Robertson Hales Lawyers responded to lawyers Steenhof Brothers regarding a legal action initiated by four members stating that *"Your client alleges [many form parts of Applicant's claims] that our client lacks the necessary authority as, and powers ancillary to Council of the Association for the reasons stated in your letter of 15 June 2020. Our client objects to your clients' allegations"*. No response from plaintiffs to this letter.
4. 11/03/2021 - Applicant reached for an agreement without costs to a legal action he took against SMS at Supreme Court.
5. 11/03/2021 - A member took a legal action through lawyers Butcher Paul & Calder challenging the application of another member for the position of Secretary. The legal challenge was discontinued.
6. Given the obsolete and/or perceived nature of the matters raised time and time again, it might be prudent to take it to a general meeting.
7. **Regarding legal actions, as an insured party, SMS and MC always put its best efforts to minimise insurance costs and any potential legal liability of past inadvertent actions.**

12. Annual General Meeting 2020/2021 & Nominations for the Management Council Positions

1. Due to Covid-19 restrictions, AGM was postponed several times. MC was also cautious due to complaints made to WA Police and venue operators of having meetings during the SGM held on 21 June 2020. These issues were notified to members by email.
2. AGM scheduled for 07/02/2021 was adjourned due to State Government announced Covid-19 restrictions on 05/02/2021.

3. 01/03/2021 - New AGM notice for 28/03/2021 was issued in accordance with Model rules Clause 56(d) and Cause 52 (1).
4. 20/04/2021 - Returning Officer (RO) responded to an email from Applicant and five other members [Group - Kanagaratnam Thanabalasingam, Geetha Devadas, Sundarakanthy Nadesan, Sivapragasam Arulpragasam and Vasanthi Sivanpathakumar] - advising that the election was conducted in a free and fair manner.
5. 28/07/2021 - MC responded to an appeal (and a further submission) by the Group, disputing election process - advising that the election was conducted in accordance with SMS Rules 11 - no further action is required.
6. 08/08/2021 – MC received another email from the Group requesting to arrange an external mediator to inquire their concerns about the conduct of the election and access SMS documents.
7. The statement by Applicant that the Secretary has “*posted an objection to the nomination of two candidates – Vasanthi Sivanpathakumar and Jeevan Jeganathan to members*” is partly true. The opinion provided to the RO on request was released to members due to circulation of biased emails and legal actions on matters related to 2020/21 nominations.
8. **Conduct of the AGM and the election process were carried in accordance with SMS rules 11 and 17.**

13. Financial Statements 2019/2020 and other Important Financial Documents

1. For transparency, several financials, including Kumbabisheham accounts, liability statements, federal Government grant disbursement and acquittals, and a 9-month statement of accounts for 2020/21 were provided with the 2019/20 Annual report and Audited Financial Statements at the 24th AGM held on 28/03/2021.
2. **Members can have access to SMS documents in accordance with SMS rule 25. To access these documents, MC has requested the Applicant to sign a “Declaration Form” to assure that the request is directly connected with the association’s affairs as required by the *Associations Incorporation Act 2015*. As Applicant refused to sign the form, access was denied.**

14. Breaches Committed Against Mr. Jevakody Sivanpathakumar

1. 22/09/2019 - Decision to expel the Applicant was taken unanimously in consideration of protecting the privacy of our members and council members from his distressing emails, and after exhausting all the avenues for a positive resolution.
2. 14/08/2020 - State Administrative Tribunal Orders - “Upon the written agreement of the parties signed on 14 August 2020 the application is withdrawn”.
3. 09/03/2021 - Supreme Court of WA Minute of Consent Orders - “*upon agreement of the parties that the Defendant accepts the renewal of Plaintiff’s membership of the Defendant for the 2020/21 financial year, effective 30 August 2020, the parties hereby consent to the following orders: 1. the Action be and is hereby dismissed; 2. there be no order as to costs and any cost order be and is hereby vacated.*”
4. **The legal actions at Supreme Court of Western Australia and SAT were settled by mutual agreement of both parties [Applicant and SMS], no action to be taken in this regard.**

15. Breach of Agreement

1. Rule 23(1) referred to relates to ‘Proxy Votes’ and has no relevance to any of Applicant’s claims.
2. The Audited Annual Accounts and settlement of large long-term liabilities speak for MC’s fiscal management.
3. President, Secretary and Treasurer implements MC’s decisions as per powers vested on them under SMS Rules 13, 14 and 15.
4. **Applicant’s claims are by no means exhaustive and does not disclose a reasonable cause of action required. President, Secretary and Treasurer only implements MC’s decisions as per powers vested on them. Applicant’s ill-defined claims against two officers of SMS are not accepted - MC’s position is that its decisions are generally made unanimous, and it is responsible for the actions and/or communications by its office bearers. MC always acted in the best interest of its members in accordance with applicable laws, including Section 21 (1) of the *Incorporation Associations Act 2015*.**

Therefore, Management Council concludes that the Association has conducted its affairs in accordance with SMS Rules and other relevant legislations, no further action is required.