

**Matter of Patel v State of N.Y. Dept. of Correctional  
Servs.**

2010 NY Slip Op 32636(U)

September 2, 2010

Supreme Court, Albany County

Docket Number: 802-10

Judge: George B. Ceresia

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STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

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In The Matter of the Application of VINOD PATEL,

Petitioner,

For A Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules,

-against-

STATE OF NEW YORK DEPARTMENT OF  
CORRECTIONAL SERVICES, ET. AL.,

Respondents.

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Supreme Court Albany County Article 78 Term  
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding  
RJI # 01-10-ST1315 Index No. 802-10

Appearances:            Vinod Patel  
                              Inmate No. 07-A-2244  
                              Petitioner, Pro Se  
                              Coxsackie Correctional Facility  
                              P.O. Box 999  
                              Coxsackie, NY 12051-0999

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**DECISION/ORDER/JUDGMENT**

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Coxsackie Correctional Facility, has commenced the

instant CPLR Article 78 proceeding to review an adverse grievance determination of the Central Office Review Committee (“CORC”) with regard to the petitioner’s complaints about respondent’s efforts to obtain some authority from the Hindu faith to ensure petitioner’s religious requests are properly reviewed.

The grievance was granted by the Inmate Grievance Resolution Committee (“IGRC”) on September 9, 2009. The determination recited as follows:

“It is the recommendation of the IGRC that this grievance be ‘unanimously accepted’: after reading the investigation it is noted that between June and July of 2009 The Coordinating chaplain states that: ‘Many calls were placed by me to the Hindu Temple, in many attempts to facilitate the complainant’s need. All my efforts to date have proven futile, as no one ever answers the phone or, responded to the many messages I have left. No one is at the temple to answer the phone.’ It is noted by the IGRC that The Coordinating Chaplain makes no mention of writing a letter to said Temple Nor does he mention the actual name or address of said Temple. Directive 4202 section (B) Background states in part: ‘For religions not represented by certified Chaplains, The Department will seek advice on matters of religious doctrine, practice and tradition from recognized religious authorities in the outside community.’ (emphasis on the word authorities (please note the word is plural not singular meaning multiple sources not just one.) The IGRC recommends that the Coordinating Chaplain please put pen to paper and either write to this Temple or use the Internet to find an alternative source of guidance for this matter so that the inmates request can be fulfilled.

“Advised grievant to contact a chaplain he knows as a point of contact to get him in touch with a temple in Albany.”<sup>1</sup>

For reasons not apparent to the Court, the petitioner appealed the determination to the Superintendent, who “accepted” the grievance in part in a decision dated September 15, 2009

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<sup>1</sup>The final sentence was printed beneath the typewritten portion of the determination.

which recited as follows:

“Per the facility Chaplain, The Director of Family and Volunteer Services was contacted and he was directed to contact the Hindu Temple in Albany. As of this date, no contact has been made, as the Temple does not answer the phone number supplied to the Chaplain. The grievance is accepted in so far as an outside clergy person be contacted per Directive #4202 to volunteer their services.”

The petitioner then appealed to CORC, which reviewed and granted in part the appeal in a decision dated October 14, 2009 which recited as follows:

“Upon full hearing of facts and circumstances in the instant case, the action requested herein is hereby accepted only to the extent that the CORC upholds the determination of the Superintendent for the reasons stated. For clarification, CORC notes that Coordinating Chaplain contacted the Director of Ministerial and Family Services. CORC asserts that the department takes no position in acknowledging any particular religion within its inmate population. The department merely attempts to identify particular faiths within the inmate population in an effort to accommodate the legitimate spiritual needs of its inmates as reasonably as possible in a manner which is commensurate with its legitimate correctional interests and the safety and security of its respective facilities. CORC notes that Chaplain R.... made several attempts to seek advice on Hindu matters of religious doctrine, practice, and tradition from a *recognized religious authority in the outside community in accordance with Directive #4202, Section B.* Further, the grievant may encourage an outside clergy person to contact the coordinating chaplain and apply to become a registered religious volunteer. In regards to the grievant’s appeal, CORC asserts that all relevant information must be presented at the time of filing in order for a proper investigation to be conducted at the facility level. CORC notes that CX-14013-08 regarding a Hindu vegetarian diet, was answered by CORC on 4/30/08. CORC is the final appellate level of the Inmate Grievance Program, and there is no provision in Directive #4040 for further review of this grievance.”

Initially, to the extent that CORC and the Superintendent “accepted” the grievance, the Court finds that the petition fails to state a cause of action, since both the Superintendent and CORC have determined that an outside Hindu clergy person must be contacted.

Apart from the foregoing, “[j]udicial review of administrative decisions [concerning] inmate grievances is limited to a determination of whether the challenged determination is irrational, arbitrary or capricious” (Matter of Harty v Goord, 3 AD2d 701, 702 [3<sup>rd</sup> Dept., 2004] quoting Matter of Cliff v Brady, 290 AD2d 895 [2002], lv denied, lv dismissed 98 NY2d 642 [2002]; Matter of Cliff v Eagen, 272 AD2d 687 [2000]; see also Matter of Clark v Fischer, 58 AD3d 932 [3<sup>rd</sup> Dept., 2009]). Phrased differently, “[t]o prevail, petitioner must demonstrate that the Central Office Review Committee's determination was arbitrary and capricious or without a rational basis” (Matter of Patel v Fischer, 67 AD3d 1193 [3<sup>rd</sup> Dept., 2009] citing Matter of Keesh v Smith, 59 AD3d 798, 798 [2009]; Matter of Green v Bradt, 69 AD3d 1269, [3<sup>rd</sup> Dept., 2010]; Matter of Frejomil v Fischer, 68 AD3d 1371 [3<sup>rd</sup> Dept., 2009]; Matter of Matos v Goord, 27 AD3d 940, 941 [2006]).

Department of Correctional Services Directive 4202 recites, in part, as follows:

“B. Background. The Division of Ministerial and Family Services, which falls under the jurisdiction of the Deputy Commissioner for Program Services, is responsible for ensuring that all religious programs and practices are carried out in accordance with the established tenets and practices of the faiths as well as the policies and procedures of the Department. *For religions not represented by certified Chaplains, the Department will seek advice on matters of religious doctrine, practice and tradition from recognized religious authorities in the outside community.*

“C. Policy. In recognition of the First Amendment right of ‘religious liberty’ and in pursuit of the objective of assisting

inmates to live as law abiding citizens, it is the intent of the Department to extend to inmates as much spiritual assistance as possible as well as to provide as many opportunities as feasible for the practice of their chosen faiths consistent with the safe and secure operations of the Department's correctional facilities. This includes provisions for religious volunteers who must be fully registered (see Directive # 4750, 'Volunteer Services Program') to participate in authorized facility religious programs.

"In situations where an inmate's faith may not be represented by a chaplain at his or her resident facility, the inmate may encourage an outside clergy person to contact the coordinating chaplain to apply to become a registered religious volunteer. []"  
(emphasis supplied)

Included in the record is a memo dated August 25, 2009 from Father Reddie, the Protestant Chaplain of Cocksackie Correctional Facility. Father Reddie indicates that through late June and July 2009 many telephone calls were placed by him to a Hindu Temple in order to facilitate the petitioner's needs. According to the memo, no one returned his calls. The petitioner's grievance is dated June 25, 2009.

The attempts of Father Reddie to contact an outside authority of the Hindu faith were sufficient to demonstrate a reasonable effort, up to this point, to comply with Department of Corrections Directive 4202. For this reason, the Court finds that there was a rational basis for CORC's determination. This being said, the Court is of the view that the respondent is under a continuing obligation under Directive 4202 to make actual contact with a recognized authority of the Hindu faith. In this respect, the Court finds that the determination under review should not operate as a bar to the filing of a subsequent grievance, in the event that a suitable authority in the Hindu faith is not secured within a reasonable time.

The Court finds that the determination was not made in violation of lawful procedure,

procedure, is not affected by an error of law, and is not irrational, arbitrary and capricious, or an abuse of discretion. The Court concludes that the petition must be dismissed.

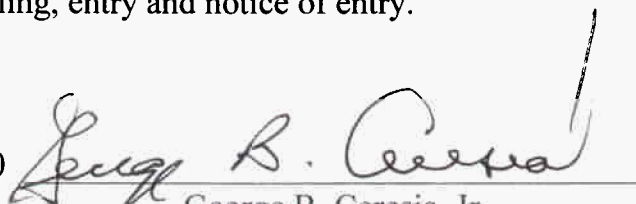
Accordingly, it is

**ORDERED and ADJUDGED**, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the Respondent. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment and delivery of this decision/order/judgment does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

**ENTER**

Dated: September 2, 2010  
Troy, New York

  
George B. Ceresia, Jr.  
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated March 11, 2010, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated May 10, 2010, Supporting Papers and Exhibits
3. Petitioner's Reply to Respondent's Answer, filed May 25, 2010