

C-1: The Gangtok, Sikkim Court decision dated August 26 2003

THE WRIT PETITION IS DISMISSED WITH COSTS ASSESSED AT Rs 3.000,-

The judgement is explained by Chief Justice R.K. Patra and Judge N. Surjamani Singh as follows:

Chief Justice R.K. Patra gives the following judgement:

1. What is the real purpose of the petitioner's (Tshurphu Labrang) writ petition? It is an attempt to be accepted as a necessary party in the pending suit for the rightful administration of Rumtek Monastery? Chief Justice R.K. Patra explains as follows:

The request for acceptance looks innocuous but if the veil is lifted it would disclose that the entire object of the petitioner is to project and get declared Urgyen Trinley Dorje as the 17th Karmapa. This is evident from an earlier statement, wherein Tshurphu Labrang (the petitioner) said that it is in control and in possession of the suit properties and is holding them for the benefit of Urgyen Trinley Dorje, who is accepted as the 17th Gyalwa Karmapa. In that particular statement it has been further stated by the petitioner that Urgyen Trinley Dorje has been confirmed as the 17th Karmapa by the Dalai Lama and also accepted by all the lamas of the Kagyu School. In paragraph 18 it has contended that the real issue is whether Urgyen Trinley Dorje is the 17th Karmapa or not.

We are inclined to hold that the entire game of the petitioner is to project Urgyen Trinley Dorje as the 17th Karmapa and subsequently let him take control over the Karmapa Charitable Trust and the Dharma Chakra Centre (Rumtek Monastery).

However, the question whether a particular person is the 17th incarnation of the Karmapa or not is not the bone of contention. It is a foreign issue to the case at hand. Instead the main dispute between the parties of the pending suit is whether the plaintiffs, being the trustees, are obliged to possess and administer the suit property or whether

the defendants 1 - 3 have illegally dispossessed them. For all given reasons, the petitioner's request to be included in the pending suit has no merit.

2. What are the real facts?

Chief Justice R.K. Patra gives following judgement :

Quote

The respondents 1-4

1. Karmapa Charitable Trust,
2. Shri T.S. Gyaltzen,

3. Kunzig Shamar Rinpoche,
4. Shri Gyan Jyoti Kansakar

have instituted Civil Suit No. 40 of 1998 on the file of the learned District Judge (East + North) Sikkim at Gangtok against respondents 5-7

5. State of Sikkim through Chief Secretary
6. The Secretary, Ecclesiastical Affairs, Government of Sikkim
7. Goshir Gyaltzap Rinpoche

Their case in the plaint is as follows:

In the year 1959, His Holiness Ranjung Rigpae Dorje, the 16th Gyalwa Karmapa being accompanied by nearly 300 high lamas, monks and lay followers came from Tibet and settled at Rumtek in East District of Sikkim. The then Chogyal of Sikkim Sir Tashi Namgyal offered him 74 acres of land in perpetuity for the construction of the monastic centre which is now known as the Dharma Chakra Centre.

While coming to Sikkim, the Karmapa brought with him precious and sacred relics, ritual items, icons, paintings etc. which have been preserved in the monastery at Rumtek. The most precious and invaluable religious symbol of the Karmapa is the Black Hat which was also preserved in the monastery till 1992. Since 1959, besides the monks of Tibetan origin, a number of individuals from Sikkim and outside have joined the Dharma Chakra Centre as students, disciples and devotees of Karmapa. On 6th November 1981 the 16th Karmapa expired. Before his death, he established a public religious and charitable Trust called Karmapa Charitable Trust for the purpose mentioned in the trust deed dated 23rd August 1961. Under the said deed the 16th Karmapa was the sole trustee during his life-time. Following the death of the 16th Karmapa, in terms of the trust deed respondents 2 to 4 took charge of the properties and affairs of the Dharma Chakra Centre. As per the trust deed, they are under legal obligation to continue to hold charge of the entire properties of the trust until the 17th Karmapa attains the age of 21 at which point of time he (the 17th Karmapa) shall become the sole trustee once again and the trustees discharging their obligation under the trust deed shall automatically become *functus officio*. The respondents 2-4 in their capacity as the duly appointed trustees of the Karmapa Charitable Trust are the sole, absolute and exclusive legal authority of the trust (having stepped into shoes of the deceased 16th Karmapa) which has vested in them on their assumption of the office of trustees. The corpus of the trust which vested in them, *inter alia*, includes the movable and immovable properties as mentioned in Scheduled "A" and "B" of the plaint (hereinafter referred to as the suit property). The respondents 2-4 as the duly appointed trustees also moved the learned District Judge after issuing notice to the parties concerned as well as to the general public by order dated 10th March 1986 allowed the prayer for grant of succession certificate in their favour.

While the matter stood thus the state government of Sikkim through its officers respondents 5 + 6 under the pretext of maintaining law and order within the

premises of the Dharma Chakra Centre deployed massive police force on 2nd August 1993 with a view to interfere with the rights, duties and obligations of the respondents 2 - 4. The illegal and arbitrary action made on 2nd August 1993 was the result of collusion and covert acts of the respondents 5 - 7. On that day, i.e. 2nd August 1993, respondent 7 with the connivance of respondents 5 and 7 invited large number of lay people from Gangtok and other places into the courtyard of the monastery and terrorised and harassed the legitimate monks/beneficiaries of the Dharma Chakra Centre. The unruly mob resorted to violence on account of which a number of monks/beneficiaries were injured and extensive damage to the monastery was also caused. Although police officials were present within the monastery, no action was taken against the culprits who indulged in violence.

The then Home Secretary ordered confiscation of the main key of the principle shrine hall of the monastery which was promptly carried out by the police and officers present there. After illegal confiscation of the key, the police and supporters of respondent 7 launched illegal eviction of monks/beneficiaries from their respective homes, quarters located within the premises of the Dharmna Chakra Centre. Taking advantage of indiscriminate arrest and detention of the innocent monks/beneficiaries, the officers of State Government seized an opportunity to open the pricipal shrine hall of the monastery. Ever since the fateful day of 2nd August 1993, the entire premises of the Dharma Chakra Centre including the main monastery, personal residence of the Karmapa are under illegal/unlawful possession of respondent 7 held through respondents 5 and 6. As a result of this, it has become impossible for the respondents 2 to 4 to enter into the premises and discharge their lawful duties as trustees and their obligations towards the beneficiaries of the trust.

On the basis of the above averments, the respondents 1 to 4 have sought for an order of eviction of all the encroachers inducted by respondent 7 from the suit property, rooms, quarters, houses of the Dharma Chakra Centre and restoration of the same including the main key of the principal shrine hall to them (respondents 1 to 4) and for a decree that the respondents 1 to 4 are alone entitled to possess and administer the suit property.

Unquote

After some purely legal arguments Chief Justice R. K. PATRA continues his judgement as follows:

Quote

At this stage, we may like to know as to who is this petitioner - Tshurphu Labrang. According to the petitioner "labrang" means the residence of a high and eminent spiritual master 'Lama'. It also means the administration of Lamas. Amongst some prominent Labrangs, the petitioner is one of them, being Tshurphu monastery of Karmapa. In paragraph 7 of this application the petitioner has averred that after the death of 16th Gyalwa Karmapa in November, 1981, Urgyen Trinley Dorje who is now a minor has been recognized by the Dalai Lama as the 17th reincarnation of the Gyalwa Karmapa. In paragraph 8, it has been asserted that the petitioner is in charge of the administration over property, monasteries, schools, philanthropic and spiritual works undertaken by the Karmapa including religious activities at the Rumtek monastery. The specific case of the petitioner is that Karmapa alone is competent to appoint a General Secretary (in Tibetan language, General Secretary is known as Zhanag Zodpa). **If, according to the petitioner, the 17th Karmapa is still a minor, it is not conceivable under what law a minor could appoint a General Secretary through whome application under Order 1 rule 10 CPC as well as this application has been filed.**

Besides this, one Tenzing Namgyal claims to be the General Secretary of the petitioner since 1992. This claim has been refuted by respondents 1 to 4 in their counter-affidavit stating that the 16th Gyalwa Karmapa appointed one Dhamchoe Yongdu as the General Secretary who died on 10th December, 1982 and after him one Topga Yulgyal who died in October, 1997. If Topga Yulgyal was the General Secretary from 1982 till his death in October 1997, Tenzing Namgyal could not have been appointed as the General Secretary in 1992. The claim, therefore, put forth by Tenzing Namgyal that he is the General Secretary of the petitioner appears to be preposterous.

Unquote

The judgement of Chief Justice R.K. Patra ends with the following verdict:

Quote

IN THE RESULT; THERE IS NO MERIT IN THIS COMPOSITE APPLICATION WHICH IS HEREBY DISMISSED WITH COSTS ASSESSED AT Rs. 3,000/-.

Sd/-

(R.K. Patra)

Chief Justice

26.08.2003

Unquote

Judge Singh supports the judgement of Chief Justice R.K. Patra and adds his own judgement as follows:

Quote

I have had the privilege of perusing the judgement proposed by the Hon'ble the Chief Justice. I respectfully concur the opinion by the Hon'ble Chief Justice and, over and above that, I hereby add opinion of mine and observations stated infra:-

Unquote

Judge Singh ends his own judgement with the following verdict:

Quote

For the reasons and observations made above, I am of the view that the writ petitioner could not make out a case to justify interference with the impugned order dated 15th November 2002 passed by the learned District Judge (East and North) in CMC no. 19-2002 and apart from that the said Shri Tenzing Namgyal, the alleged General Secretary or Shri Karma Drolma, the alleged Power of Attorney holder has failed to establish that they have enforceable legal right to file the present writ petition for and on behalf of the Tshurphu Labrang. In my considered view, the writ petition is devoid of merit.

Sd/-

Surjamani Singh)

Judge

26.8.2003

Unquote

C-2: The Supreme Court decision on appeal July 5 2004

SLP(C)No. 22903 OF 2003 ITEM No.41 Court No. 5 SECTION XIV
A/N MATTER

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.22903/2003
(From the judgement and order dated 26/08/2003 in WP 5/03
of The HIGH COURT OF SIKKIM at Gangtok)

TSHURPHU LABRANG Petitioner (s)

VERSUS

KARMAPA CHARITABLE TRUST & ORS. Respondent (s)
(With Appln(s). for permission to place addl. documents Vol.III
to VI and exemption from filing O.T. and clarification and
directions and with prayer for interim relief and office report)

Date : 05/07/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Petitioner (s) Mr. A.B. Saharya, Sr. Adv.

Mr. Sudarshan Misra, Sr. Adv.

Mr. Naresh Mathur, Adv.

Mr. Sudarsh Menon, Adv.

For Respondent (s) Mr. Parag Tripathy, Sr. Adv.

Mr. Parveen Agarwal, Adv.

Mr. Somnath Mukherjee, Adv.

Mr. S.S. Hamal, Adv.

Mr. Kamal Jetely, Adv.

Mr. Gurpreet Singh, Adv.

Mr. Jayant, Adv.

Mr. Harish N. Salve, Sr. Adv.

Mr. Deepak K. Thakur, Adv.

Mr. K.V.Mohan, Adv.

Mr. Brijender Chahar, Adv.

Mrs. Jyoti Chahar, Adv.

Mr. Ashok Mathur, Adv.

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UPON hearing counsel the Court made the following

O R D E R

Mr. B.S. Chahar, learned counsel states that the State of Sikkim does not desire to file affidavit.

We see no reason to interfere. The Special Leave Petition is dismissed. We, however, clarify that the trial court will not take into consideration any observations made in the impugned order or in the order of the District Judge dismissing the application.

(K.K. Chawla) Court Master

(Jasbir Singh) Court Master