

# CALCUTTA HIGH COURT

Manadananda Jha

Vs

Tarakananda Jha Panda

(Wamlsley and B Ghose , JJ.)

08.01.1923

## JUDGMENT

**Wamlsley , J.**

1. The facts material for the determination of the questions which, require consideration in these Rules may, be briefly stated.

2. On the 15th April, 1897, one Umeshananda Dutt Jha along with two other persons instituted a suit under Section 539 of the Code of 1882 with the consent of the then Advocate-General, for the removal of the high priest of the Baidyanath Temple and for the settlement of a scheme for the management of the institution. Sailalajanand Dutt Jha, the high priest at the time, was the original defendant in that litigation. Subsequently his son, Paramprokasbanand Jha and his grandson by a predeceased son, Bhabaprotap Nand were added as defendants. After a protracted trial, the judgment was pronounced on the 4th July 1901 by Mr. Jogesh Chunder Mitter, then District Judge of Burdwan. The substance of the decision was that the high priest was ordered to be removed from his office and a scheme was drawn up for the management of the institution in future. Before the decree could be signed, Mr. Mitter left the District with the result that on the 15th July, 1901, a decree was drawn up pursuant to his judgment and was signed by his successor-in-office Mr. G.K. Deb, on the 5th of August 1901; the decree was amended by Mr. H.D. Carey, the next District Judge, by the insertion of several schedules, on the basis of the judgment. On the same day an appeal was lodged in this Court by the original defendant Sailalajanand Dutt Jha. This purported to be an appeal against the decree assigned by Mr. G.K. Deb. On the 2nd December, 1901, another appeal against the decree was lodged in this Court by Paramprokashananda During the pendency of the Appeals in this Court, on the 21st April, 1902, a copy of the decree as amended by Mr. Carey was attached to the memorandums, and thereafter the appeals proceeded on the assumption that they were directed against the amended decree. On the 16th June, 1905, this Court pronounced judgments in the appeal Silajanand v. Umeshanand 2 C.L.J 466. The appeal by Sailalajanand Dutt Jha was dismissed, but the appeal preferred by Paramprokashanand was allowed. The decree of the District Judge was modified at his instance,

but in the decretal order which was drawn up in this Court the precise variation was not specified. On the 8th September, 1910, this Court proceeded to insert two clauses in the original decree to the following effect : First, liberty to any person interested to apply to the District Court with reference to the carrying out of the directions of the scheme, and secondly, liberty to any person interested from time to time to apply to the High Court for any modification of the scheme that may appear to be necessary or convenient. It was found necessary to insert these clauses because disputes had broken up between the Committee of Management appointed under the scheme and the new high priest Umeshanand Dutt Jha who had taken charge of the institution on the removal of Sailalajanand Dut Jha. The principle on which these clauses were inserted in the decree was explained by this Court in the following passage of its judgment in the case of *Umeshanand Dutt Jha v. Ravanesioar Prosad Singh*<sup>1</sup>

3. "The authority of the Court to amend the scheme from time to time has not been and cannot possibly be questioned. It was pointed out by Mr. Justice Subrahmanya Ayyar in the case *Prayag Das Jivaru v. Tirumala Sriranga Charlu Varu*<sup>2</sup> which was subsequently affirmed by the Judicial Committee in *Prayag Das Jivaru v. Tirumala Sriranga Gharlu Varu* (1907) 30 Mad. 138, there is ample authority for the proposition that a Court which has sanctioned a scheme for the administration of a charitable trust is competent from time to time to vary the scheme as exigencies of the case may require. Reference need only be made to the decisions in *Attorney-General v. Bovell*<sup>3</sup> *Attorney-General v. Bishop of Worcester*<sup>6</sup>, *Mayor of Lyons v. Advocate-General-of Bengal*<sup>4</sup> and *Brownies Hospital v. Stamford*<sup>5</sup>. The result of the insertion of these clauses was that parties interested in the management of the institution did from time to time apply to this Court for amendment of the scheme as originally settled and one of these instances is to be found in the case of *Umeshanand Dutt Jha v. Ravaneswar Prosad Singh* <sup>7</sup>A copy of the scheme as varied from time to time is not on the record of this Court, and it is consequently impossible for us to state what the precise position of the scheme is at the present moment. We shall presently give directions so that this difficulty may be avoided in future.

4. It is sufficient to state for our present purposes that Umeshanand who has succeeded Sailalajanand died on the 12th April, 1921. The immediate result was that rival claimants appeared on the scene for the office of Sardar Panda or high priest, and the Eules which are now before us represent the result of this struggle. Rule 136 has been issued at the instance of Manadananda Jha who claims to be the daughter's son of Umeshanand and his adopted son. His age is stated to be 25 years. Rule 144 has been issued at the instance of Bhabapritanand Jha whose age is 37 and who is stated to be the grandson of Sailalajanand by a predeceased son, Tripuranand. Rule 2 of 1923 has been issued at the instance of Paramprokashanand Jha the second son of Sailalajanand whose age is stated to be 49. The object of Paramprokashanand is to secure a variation of the scheme so as to entitle him to succeed to the office of high priest by right of inheritance. The object of Manadanand Jha as also of Bhabapritanand is to remove the bar of ago restriction so as to enable them to stand for election to the office of high priest.

5. It is at this stage necessary to recite that three schedules were annexed to the decree when it was amended by Mr. H. D. Carey on the 18th January, 1902. Schedule A sets out the rules for the succession of the Sardar Panda according to ancient usage. Schedule B contains a statement of the duties of the Sardar Panda as ascertained by the Court to be according to ancient usage and as laid down for the proper management of the debutter properties. Schedule C defines the duties of the Committee appointed as part of the scheme of management decreed in the suit. We are now concerned only with the terms of Schedule A. This embodies two rules in the following terms : (1) The succession to the office of Sardar Panda devolves usually upon the first born son of the last Sardar Panda to the exclusion of all others, provided that the said eldest son is at least 45 years of age and otherwise duly qualified, and if the said first born son be dead, or be disqualified by ill-health or otherwise at the time of the said devolution of the office, then his son is entitled to succeed, if he be, at least of the said age and otherwise duly qualified. (2) Where-, the person so entitled by inheritance to succeed is of an age less than 45 years, the person of the said family if there be any, and\* in default of such, a person of another family being of the said age of 45 years and; otherwise duly qualified, shall be elected by a majority of votes of the Pandas to hold office for life, and on his death, the-heir under the first rule above stated who was excluded by this election, shall succeed if of the said age of 45 years and otherwise duly "qualified".

6. It may be stated at the outset that it is not competent to this Court to vary the rules for succession of Sardar Panda, which were determined in the original suit according to ancient usage. A variation in this respect cannot be taken to be a modification of the scheme that may appear to be necessary or convenient" within the meaning of the second clause inserted in the decree on the 8th September, 1910, on the authority of the cases already mentioned. It is consequently inevitable that the attempt of Paramprokashanand to have a rule inserted to the effect that the second son of the high priest is entitled to succeed-to the office in certain events must fail. It may be pointed out that Paramprokashanand was a party defendant to the original litigation. He was dissatisfied with the decree made therein and did in fact prefer an appeal to this Court. At his instance the decree of the trial Court was varied in an important particular. It was open to-him in that appeal to set up the contention which he has advanced in the present Rule. His omission then operates as a bar and he cannot now be allowed practically to have a fresh appeal against the decree of the trial Court after the lapse of all these years. Similar observations apply to the applications made by Manadanand Jha and Bhabapritanand Jha for modification of the rules for succession of the Sardar Panda with a view to the removal of the bar of age restriction.

7. The question, however, remains what are the rules for the succession of the Sardar Panda according to ancient usage as determined by this Court. With regard to this matter there has been some misapprehension. It has been stated to us that the effect of the decision of this, Court in the appeal preferred by Paramprokash has been interpreted to be that the rules for succession of the Sardar Panda as formulated by the District Judge were maintained, and that nevertheless an exception was made in his favour, an exception which contradicts the rule in a material particular.

We have carefully considered the judgment which was delivered in the appeal preferred by Paramprokash, and we have without hesitation come to the conclusion that the effect of this judgment was to modify the rules for the succession of the Sardar Panda as enunciated by the District Judge, on the basis of the evidence on the record. Mr. Justice Harington, after a discussion of the conflicting evidence on the point, formulated the rule in the following terms : "If the eldest son of the Ojha has attained the age of 40 at the death of his father, he is entitled to the Ojhaship by right of succession. If he has not attained that age there must be an election by the Pandas and the person whom they elect as priest is entitled to fill that office subject only to confirmation by the Government. There are several instances in which a person elected by the Pandas was under the age of 40. But our attention has been drawn to no instance in which the person entitled to the Ojhaship by succession has been called upon to submit himself to the votes of the Pandas if he was over 40 years of age at the time when the office descended to him." The consequence was that both the rules enunciated by the District Judge with regard to the succession of the Sardar Panda were modified by this Court because this Court took a view of the evidence relating to the ancient usage applicable to the subject, different from that adopted by the trial Court.

8. In our opinion it is necessary that the decree as framed by the District Judge on the 18th January, 1902, should be amended so that full effect may be given to the judgment of this Court delivered on the 16th June, 1905, in the appeal preferred by Paramprokashanand. The result will be as follows: First, the succession to the office of Sardar Panda devolves usually upon the first-born son of the last Sardar Panda to the exclusion of all others provided that the said eldest son is at least 40 years of age and otherwise duly qualified, and if the said first-born son be dead or be disqualified by ill-health or otherwise, at the time of the said devolution of the office, then his son is entitled to succeed, if he be at least of the same age and otherwise duly qualified.

9. Secondly, where the person so entitled by inheritance to succeed is of an age less-than 40 years, another person of the said family, if there be any, and in default of such, a person of another family though not of the same age of 40 years and who-is otherwise duly qualified, shall be elected, by the majority of votes of the Pandas to hold office for life, and on his death the-heir under the first rule above, if he had been excluded by the election, shall succeed if of the said age of 40 years and' otherwise duly qualified, subject to the approval of the District Judge.

10. If this amendment be made, the purpose which Manadanand has in view will be achieved. But Paramprokashanand will have to face an election.

11. We must not be taken, however, to-decide, apart from the question of age restriction, that either Manadanand or Bhabapritanand is otherwise duly qualified for the office of high priest. It has been stated before us that as regards Manadanand there is a question of his title by alleged adoption as the son of Umeshanand. As regards Bhabapritanand, it has been mentioned that there is a question of legitimacy. In these circumstances, we express no opinion whatever upon the

question of right of either of these persons to stand for election, and the District Judge will be free to deal with the matter on such materials as may be placed before him. The only direction that we give at present is that the decree of the District Judge, dated the 18th January 1902, embodying in Schedule A the rules for the succession of the Sardar Panda according to ancient usage be amended as stated above. There will be no order for costs of these Rules.

12. We direct that a copy of the decree dated the 18th January, 1902, as originally framed together with all modifications which might have been made by orders of this Court be prepared and attached to the decrees of this Court in F.A. 234 of 1901 and F.A. 323 of 1901 and that hereafter whenever a variation is made by this Court in the decree, a note thereof be made so as, to make it possible for the Court to ascertain at a glance the precise condition of the decree at the time when the question, arises for consideration.

#### Cases Referred.

- 1(1918) 43 I.C. 773
- 2(1905) 28 Mad. 319
- 3(1840) 1 Ph. 762
- 4(1876) 1 A.C. 110
- 5(1889) 60 L.T. 288
- 6(1851) 9 Hare. 762
- 7(1912) 16 C.L.J. 431