

OPERATIVE PART OF THE JUDGMENT
(Translation)

Sangay Gyaltshen v. OAG
Samtse Mining Case

Order

The Supreme Court in accordance with section 96 of the Civil & Criminal Procedure Code after granting full opportunity and consideration to all the submissions of the appellant and respondent decides as follows:

Out of the forty charges for which Sangay Gyaltshen (Head Mining Division) was convicted by the lower courts, the appellant/defendant submitted an appeal against six convictions only and did not contest the findings and conviction against the remaining thirty-four charges by the lower courts. The co-accused Dorji Tshering (brother of the defendant) and Sonam Tobgay (cousin of the defendant) appealed to the Supreme Court but later withdrew their appeal, accepting the decision of the lower courts convicting them for forgery in connection with the illegal operation of the Lower Saureni talc mine.

- a) The appellant on 27/02/01 prepared an application for operation of the lower Saureni talc mine addressed to the Director Mines. The application is found written on the pad of one Dawa Export in the name of Rinzin Wangchuk with a forged signature. Two lease agreements are found prepared in the name of Sonam Tobgye and one in the name of Dolay Dema for lower Saureni and Buduney talc mines respectively. The lease agreements were then approved by the appellant as the Director, while signing on one of the agreements as a witness. Further, the forged environmental clearance signed in the name of Gautam was endorsed by the appellant.
- b) Calculation of the quantity of mineral exported for purposes of restitution is found based on the record maintained when the minerals exit the country by the dispatch inspector DGM regional office and submitted to the Head Office (DGM). Similarly, the rate for the purposes of restitution has been found fixed taking into consideration the highest (Nu.1,300.00/- per metric ton) and lowest cost (Nu.900.00/- per metric ton) for the period 2003 - 2008, at an average rate of Nu.1,113.24/- per metric ton amounting to Nu. 42,659,980.00/- from the sale of talc from Lower Saureni mine. The defendant is also liable with regard to the environmental restoration bond amounting to Nu.2,34,560.00/- and Nu.1,11,887.00/- for Saureni and Buduney talc mines respectively and an amount of Nu.6,00,000.00/- received from Nagay as bribe. Therefore, the defendant is held liable to retribute a total sum of Nu.4,36,06,427.00/- to the government as per the charges. However, the lower courts' have fixed the amount at Nu.4,32,62,980.00/- and it has not been contested by the prosecution.
- c) Property of the appellant – not confirmed by the prosecution on the grounds that they have investigated and established the abuse of authority and corruption and is not responsible to establish where the illegal gains were invested at this stage of the proceedings against the appellant. The prosecution submitted that *“they have seen what the defendant has eaten, but not where or what he has excreted”*. The court acknowledges the justification and rules that the need to establish proof of amassed wealth through criminal activity within the Kingdom or where it has been invested is not an absolute requirement for finding of guilt. If such a

precedent is not established by the Courts, then all persons involved in illegal activities, who do not register any property or make investments in their personal names can never be prosecuted and sentenced.

- d) The Court orders that the Ministry concerned should review the process for allotting mines in accordance with the relevant laws, rules & regulations providing for transparency by resorting to auction, in order to ensure "...private sector development through fair market competition and prevent commercial monopolies" in accordance with Article 9 section 10 of the Constitution.

The sentencing imposed by the lower courts has been found to be considered concurrently. Therefore, the imprisonment term of 7 years 3 months (seven years three months) is deemed reasonable. Therefore, the Supreme Court affirms the judgment of the lower court and dismisses the appeal in accordance with section 111(a) of the CCPC and orders the appellant to reconstitute the damages to the government exchequer within 06 (six) months from the award of judgment.

**OPERATIVE PART OF THE JUDGMENT
(Translation)**

**Nagay v. OAG
(Samtse Mining Case)**

Order

The Supreme Court in accordance with section 96 of the Civil & Criminal Procedure Code after granting full opportunity and consideration to all the submissions of the appellant and respondent decides as follows:

Nagay, the then Area Coordinator, DGM was posted at Samtse. He was found guilty of forgery, bribery, tampering with public record, deceptive practice, money laundering, official misconduct, possession of assets disproportionate to lawful source of income, false declaration of asset, obstruction of lawful authority and unjust enrichment. The Court reached the following conclusions based on the evidence on record that the appellant Nagay, has:

- a) Obtained the signatures of his cousin Dolay Dema in the blank letterheads in early 2004 and operated Bank CD account # 8086 at the Bank of Bhutan, Phuentsholing. Issued an authorization letter misrepresenting his cousin Dolay Dema to the Bank of Bhutan, Phuentsholing authorizing one Gautam Tamang to operate the Bank CD account # 8086 on 16 March 2004. Issued an authorization letter misrepresenting his cousin Dolay Dema to the Bank of Bhutan, Phuentsholing authorizing one Wangchuk Lama to operate the Bank CD account # 8086 on 24 May 2007.
- b) Issued a money receipt for one Rinzin Wangchuk who does not know of such receipt and had not authorized him to issue such money receipt of Nu. 1, 00,000.00/- to one T.K. Agarwal on account of the sale of Talc from Sukreti Mine on 2 January 2002. Forged the signature of Phub Thinley in Form K (S/70 Annex I of MMR, 2002) on 15 July 2003. Nagay then used this form to transfer mining application for mining lease of Sukreti Phase 8 Talc mine to one Dochu of M/s Dochu Export for a consideration of Nu. 100,000.00/-.
- c) Deceived the authorities while applying for the lease of Buduney Talc Mine misrepresenting one Dolay Dema on 5 January 2004. Applied for quartzite collection permit from Kharey Khola misrepresenting his brother-in-law Phub Thinley on 12 February 2001. Applied for the first renewal of the quartzite collection permit of Kharey Khola misrepresenting his brother-in-law Phub Thinley on 29 December 2001. Applied for the second renewal of quartzite collection permit of Pangray, Duarpani, and Kharey Khola, Tintalay misrepresenting his brother-in-law Phub Thinley on 5 January 2003. Applied for the third renewal of quartzite collection permit of Pangray, Duarpani, and Kharey Khola, Tintalay misrepresenting his brother-in-law Phub Thinley on 20 December 2003.

- d) Applied for the Low grade quartzite collection at Buduney misrepresenting Dolay Dema on 10 April 2006. Forged the signature of Rinzin Dorji and applied for Teen Powa Quartzite collection on 3 April 2006. Forged Puenzhi Export's letter head to enable him to export Talc from Sukreti Khola on 27 December 1998. Executed an agreement to sell quartzite collection permit for Kharey Khola with T.K Agarwal, an Indian national, misrepresenting his brother-in-law Phub Thinley on 20 December 2001 and in contravention of the provisions of the lease agreement.
- e) Issued a hand receipt for the amount of Nu. 40,000.00/- on account of the sale of quartzite collection permit for Kharey Khola to T.K Agarwal, an Indian national, misrepresenting his brother-in-law Phub Thinley on 24 December 2001. Issued a hand receipt for the amount of Nu. 40,000.00/- on account of the sale of quartzite collection permit from Kharey Khola to T.K Agarwal, an Indian national, misrepresenting his brother-in-law Phub Thinley on 1 February 2002. Applied for the Soilay Khola East Talc Mine misrepresenting his cousin Dolay Dema, without authority to do so in 2004.
- f) Paid Sangay Gyaltzen Nu.6,00,000.00/- on 20 March 2007. Falsely altered the Gewog Clearance for Kharepakha Talc Mine to Gewog Clearance for Sukreti Phase 8 Talc Mine on 11 August 2003. Deceived authority, permit Dochu to mine at Sukreti Phase 8 knowing that Sukreti Phase 8 did not have Forest Clearance in 2003. Made his cousin Dolay Dema to sign the lease agreement for Buduney Talc Mine on 2 February 2006.
- g) Made Rinzin, his brother-in-law to apply and execute lease agreement for Kusumtar Talc Mine on 14 October 2005 and 11 February 2008 respectively for his personal benefit. Made Phub Thinley, his brother-in-law to apply and execute lease agreement for Allaypakha Talc Mine on 9 January 2003 and 16 March 2004 respectively for his personal benefit.
- h) Made his brother Ugyen Samdrup to deposit Nu. 12,00,000.00/- on 1 April 2008 in account number # 7447 of one Chimi maintained at the Bank of Bhutan, Samtse to conceal the proceeds of his illegal mining activities. Concealed the proceeds from his illegal mining activities, executed an agreement with one Sangay Penjor, backdating it to 15 February 2008 after ACC launched investigation stating that he availed loan of Nu. 5, 00,000.00/- from Sangay Penjor which was not true.
- i) Executed an agreement with one Binod Kumar Agarwal, an Indian National, backdating to 15 February 2008 after ACC launched investigation stating that he availed loan of Nu. 18, 00,000.00/- from Binod Kumar Agarwal which was false. Operated the Lower Saureni Talc Mine jointly with Sangay Gyaltzen between October 2005 and June 2006 through unauthorized exercise of his official functions. Sold the Allaypakha Talc Mine which was

obtained fraudulently to one Tarkesh Agarwal, an Indian National, for Nu.12,00,000.00/- from April 2004 to June 2005 through unauthorized exercise of his official functions.

- j) Obtained fraudulently, from one Jigme Dorji Nu. 9, 00,000.00/- between November 2005 to April 2007 through unauthorized exercise of his official functions. Obtained from Papu Sharma, an Indian national, commission at the rate of Nu.200.00/- per metric ton during the period of 2006 to May 2008 through unauthorized exercise of his official functions.
- k) Engaged in export of minerals using licenses belonging to M/s Tsholing Minerals Export since late 2000 and M/s Hungla Export at Samtse from 2007 through unauthorized exercise of his official functions. Engaged in the management of Kenpa Hiring Agency's equipment belonging to Sangay Gyeltsen's father Dawa Tshering from 2003 to 2008 at Samtse.
- l) Failed to comply with the provisions of Mines & Minerals Management Act 1995 (MMMA) and Mines & Minerals Management Rules 2002 (MMMR) and terms and conditions of the mining leases of Buduney, Lower Suareni, Allaypakha, Sukreti, Kusumtar for personal gain, resulting in serious environmental damages. Accumulated assets worth Nu. 1, 37, 42,354.12/- which is disproportionate to his known source of income for which he failed to furnish satisfactory explanation. He made false declaration of his assets in the year 2006 and 2007.

The liability of Nagay for the above illegal acts has been found calculated based on the quantity of metric tons of talc exported based on the record maintained by the dispatch inspector, DGM. This is the record submitted by the regional Office (DGM) to the Head Quarter (DGM). Concerning the cost of the minerals the prosecution applied the average cost for the period concerned. The restitution of Nu.4,78,44,281.52/- is hereby ordered to be made within 06 (six) months from the date of the award of judgment.

The sentencing imposed by the lower courts has been found considered concurrently. Therefore, the imprisonment term imposed by the lower Courts is deemed reasonable. The Supreme Court affirms the judgment of the lower court and dismisses the appeal in accordance with section 111 of the Civil & Criminal Procedure Code.