

Compilation of Selected Decisions
of Supreme Court on

CITIZENSHIP and
BIRTH REGISTRATION



FWLD

Working for non-discrimination and equality

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2021



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ACKNOWLEDGEMENT



Citizenship certificate and birth registration are considered the most significant legal identity documents in Nepal. The Constitution of Nepal guarantees the right to citizenship to all citizens of Nepal whereas the Nepal Citizenship Act entitles only to Nepali citizens who have reached the age of 16, the right to obtain citizenship certificates. The citizenship certificate, apart from being a significant legal document is also required to obtain other vital legal identity documents in Nepal. Without citizenship certificates, individuals cannot register on voters' list, register marriage or birth, buy or sell land, appear in professional exam, open bank account and so forth. Citizenship certificate is equally mandatory to claim social benefits and state allowances. Consequently, lacking a birth certificate and citizenship certificate presents critical challenges in all aspect of a person's day to day life in Nepal.

Birth registration has been recognised by the Constitution as a fundamental right, and is a principle document and evidence when applying for the citizenship certificate in Nepal. Initiatives have been taken by the Government of Nepal to ease the vital events registration process by amending vital events registration laws that previously contained several gaps and limitations. This was a commendable task of the government that correspondingly manifested the need of flexibility of laws as per the changing scenario.

The Supreme Court of Nepal is the court of record which has the final authority to interpret the constitution and laws. Disregard of the legal principle laid down by the Supreme Court amounts to contempt. The right to Citizenship, unrecognized as a right by the former constitution has been acknowledged, conceded and defined by the Supreme Court as a fundamental right in several rulings. Consequently, discourtesy and denial of citizenship right to eligible persons by the concerned authority ipso facto creates substantial grounds for the applicant to file a Public Interest Litigation (PIL) in the court and seek remedy invoking the extraordinary jurisdiction of the Court.

In citizenship cases, a PIL is normally filed in the court against the Municipalities, Ward Office, District Administration Office, Ministry of Home Affairs and/or Office of the Prime Minister. The Supreme Court has rendered many landmark judgments and set noteworthy precedents with regard to citizenship, where the concerned offices were issued directive orders to provide citizenship to the applicants. Furthermore, the Ministry of Home Affairs has also issued circulars in order to implement the decisions of the Supreme Court and laws on citizenship in a similar fashion. However, the implementation of the judgment and precedent rendered by the Court has benefited the concerned applicants only, while the doctrine of precedent that proclaims the lower court to take account and follow the decisions laid down by the Supreme Court in cases where the material facts are similar, has often not been considered by the lower courts and decision makers at the Municipality, Ward and District level.

This publication is an attempt to compile and translate selective decisions of the Supreme Court on Citizenship and Birth Registration for wider dissemination and reference. This publication would undoubtedly aid law and policy makers, concerned officials holding the authority to issue legal identity documents, lawyers and other stake holders to consider the consolidated judgments regarding legal identity in a succinct manner. This publication is also a milestone to mark the pivotal role of judiciary in upholding and recognizing independent rights of women to confer transfer and retain citizenship to their children on equal terms with men.

FWLD would like to extend its gratitude to Rewati Raj Tripathi, translator, and all the other translators who translated the decisions rendered by the Supreme Court for the purpose of this publication. Not to mention the support of my FWLD colleagues in the process of the publication that is praiseworthy.



Sabin Shrestha

Executive Director

Forum for Women, Law and Development (FWLD)

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1	Writ No. 3021 of the Year 2061	May 15, 2006	Dil Bahadur Bishwokarma V Government of Nepal	It is urged to issue an order to the Ministry of Local Development and local bodies under it to provide recommendation for citizenship certificate and concerned officials to provide recommendation based on surname (family name) if application is filed for it. It is also urged to issue Mandamus and other necessary order in the name of His Majesty's Government, Ministry of Law, Justice and Parliamentary Affairs and the Parliament to formulate necessary law for providing citizenship certificate on the basis of surname (family name).	Although there is clear provision in the law to issue citizenship certificates based on surname (family name) and circular has also been issued accordingly, it has been obvious from the example presented by the petitioners that sometimes citizenship certificates have also been issued mentioning caste/race. Going through the Article 11 (1) of the Constitution of the Kingdom of Nepal, 1990, there is constitutional provision that-(1) all citizens shall be equal before the law, and no person shall be denied equal protection of the law. Likewise, in Article 11(3) it is provided that the State shall not make discrimination against citizens among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these. Thus, in the condition that the constitution and laws have guaranteed the right to equal protection to all castes and tribes, to mention caste/race in the place of surname (family name) or after surname (family name) while providing citizenship certificate to Dalits without any reason and objectives, is against the objective and spirit of the law. Therefore, an order of Mandamus is hereby issued in the name of respondent bodies, to make or cause to make provision for issuing citizenship certificate or making correction thereon or providing recommendation for obtaining thereto, based on surname (family name), to the people of Dalit communities, like other citizens, while issuing citizenship certificate, making correction thereon or recommending thereto; and make or cause to make correction in the citizenship certificate mentioning the surname (family name) pursuant to law.	1
2	Writ No of the year 2063- WS-0089	N.K.P. 2065, No. 11, Decision No. 8035, Pg. 1340, April 16, 2008	Nakkali Maharjan V Office of the PM and Council of Ministers	Article 9(1) of the Constitution of the Kingdom of Nepal, 1990 and Section 3 of Nepal Citizenship Act, 1963 have provided that a person shall be deemed to be the citizens of Nepal by descent if his or her father or mother was a citizen of Nepal at his or her birth. Therefore, it is the matter of choice of a woman to obtain the citizenship either from the name of her father or her husband; however, women have been deprived from this right in practice.	In this case, from the written response of the respondent Kirtipur Municipality it has been accepted that Kirtipur Municipality has denied to make recommendation to the petitioner for obtaining citizenship in the name of father as it has been obvious from the case file. In such a situation the petitioner has been discriminated on the ground of sex/gender and marital status and by denying her recommendation depriving her from obtaining citizenship certificate violating the provision of the above mentioned International Conventions, the provisions of Article 8(2) of the Interim Constitution of Nepal, 2007 and Section 3(1) of Nepal Treaty Act, 2006 that " A person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent. Such act of Kirtipur Municipality denying the petitioner to make recommendation cannot be held legal. Therefore, the writ of mandamus is hereby issued in the	13

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				Therefore, it is requested to issue the writ of Mandamus in the name of Kirtipur Municipality to provide recommendation for citizenship as per the request of the petitioner Nakkali Maharjan along with the interpretation made for other such women residing in the country suffering from similar problem.	name of Kirtipur Municipality to provide recommendation to the petitioner Nakkali Maharjan to obtain Nepali citizenship certificate from the name of her father as per her application.	
3	2065-WO-0035	N.K.P. 2066, No. 6, Decision No. 8175, Pg. 1014, 26th June, 2009	Ranjit Thapa V Office of PM and Council of Ministers	Issue a Mandamus order to confer citizenship in the name of mother.	There is no dispute to the fact that the petitioner is a Nepali citizen and Nepal Citizenship Act, 2006 and Citizenship Rules 2006 have provided the right to petitioner Ranjit Thapa to make choice whether to obtain citizenship from the name of father or mother. Section 3 of Nepal Citizenship Act, 2006 has conferred the right to obtain citizenship either from the father or mother's name and has thus 'descent' included both of mother and father. Hence, the interpretation that the petitioner has to seek a citizenship certificate only from the address of his father shall be contradictory to the letter and spirit Nepal Citizenship Act, 2006 as well as other statutes. It would also be contrary to the international standards of human rights. Therefore, as there is unanimity that the petitioner Ranjit Thapa is a bona fide Nepali citizen and is qualified according to the Interim Constitution of Nepal, 2007, Nepal Citizenship Act, 2006 and Nepal Citizenship Rules, 2006 to obtain Nepali citizenship certificate by descent which is corroborated even by the written responses of respondents and as such though the addresses of his mother and father are separate, an order of Mandamus is hereby issued in the name of respondents to provide him citizenship certificate from any one address out of the addresses of his mother or father as per his choice.	17
4	Criminal Appeal No.0622 of the year 2064	N.K.P 2067, No. 4, Decision No. 8349, Pg. 600, March 2, 2010	Ashok Kumar Shah V Government of Nepal	The men of spot investigation have justified that I was born in Nepal; though from the deeds including the cases of partition passed by mother Tara Devi, executed in Makwanpur District Court, and from my educational certificates also that I am being seen to be a Nepalese citizen, the decision made by Home Minister to cancel to make my citizenship void and the decision of the Appellate Court, Patan is revocable; hence, the case should be repeated.	There is no situation to assume that a person is a foreign citizen simply because he/she has not obtained the Nepalese citizenship in any time period despite permanently residing in Nepal, and it has no legal base. Nepalese citizenship is required to acquire land, to achieve higher education, to register in the Government of Nepal while running any business and occupation, to get appointed to any government posts or if this certificate is supposed to be submitted as per similar other laws. Moreover, no legal provision is found to have existed that each person having permanent residency in Nepal must obtain citizenship certificate; hence, it is not correct to assume that the father of the appellant automatically remained as a non-Nepalese citizen or a foreign citizen simply because the citizenship certificate was not obtained in the then situation. The party holding the pleading that one is not a permanent resident of Nepal or is a foreign citizen has to establish factually that he is a citizen of which foreign country.	22

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5	Writ No 2067-WS-0017	N.K.P. 2068, No. 1, Decision No. 8536, Pg. 39, 7th February, 2011	Saroj Nath Pyakurel V Government of Nepal	To repeal the decision of the election commission where while registering the name of a person in the Electoral Rolls, on the basis of land ownership certificate or any identity card issued by a government office instead of citizenship certificate.	All citizens who have attained the age as stipulated by the law should be allowed to be a candidate and vote in election in a democratic system. If any single citizen who is eligible for voting is deprived of the voting right, such a system cannot be called the representative democracy having participation of all citizens. Therefore, any citizen because of being single woman should not be deprived from becoming a candidate and right to voting. Constitution has provided that discrimination must not be made among men, women and persons of third gender and since Nepal is a party to CEDAW, the persons including single women and persons with third gender should get Nepali citizenship certificate. Therefore, it is hereby issued an order to make necessary provision in this regard; With the purpose that not the name of a single eligible citizen be omitted, it is hereby also issued an order to make arrangement of collecting Electoral Rolls after making easy, accessible and effective provision of distributing citizenship certificate to all the Nepali Citizens eligible for obtaining citizenship certificate.	28
6	Writ No. of 2067 BS: 067-WO-0703	N.K.P. 2068, No. 2, Decision No. 8557, Pg. 247, 27th February, 2011	Sabina Damai Vs Government of Nepal	Pleading for the issuance of Mandamus and/or any other necessary order from the honored Court to grant me citizenship from the name of my mother and make interpretation from the honored court in case of other aggrieved persons like me. Also pleading that this writ petition be awarded preference in hearing since this subject is very sensitive and is a matter of public interest. It is stated in the writ petition filed at this Court.	As there is an obvious provision in Article 8(2) of Interim Constitution of Nepal, 2007 that Nepali citizenship may be obtained from the name of mother in cases similar to that of the petitioner whose mother is a Nepali citizen but whose father, though Nepali, has not been traced out or even the mother cannot determine who the father of the child is, it is the fundamental and human right of children to obtain citizenship in an easy manner. However, it has not been implemented in practice, so as to ensure that any other person with the cases similar to that of petitioner for obtaining Nepali citizenship certificate again, in case a child born in Nepal to a Nepali female who has been proved to be the citizen of Nepal, but whose father's whereabouts have not been traced, approaches for obtaining citizenship from the name of his/her mother, it is hereby ordered that upon fulfilling the processes and procedure of Nepal Citizenship Act and Rules, 2006 the citizenship certificate shall be issued to him/her from the name of mother in a easy manner. A directive order is also hereby issued in the name of respondent Ministry of Home Affairs to circulate this decision to all the Chief District Officers nationwide.	45
7	066-WO-0869	((January 11, 2012)	Nina Tamang (Gurung) VS Government of Nepal	Making narrow interpretation of the word 'descent' I have been denied to obtain citizenship in the name of husband and resultantly I have been deprived from the right to make a choice from whom I have to get identity. Therefore, I request to issue an order of Mandamus and/ or other necessary order to provide me citizenship certificate from the name of my husband.	When a person seeking service comes to the office and submits application thereof, it is the responsibility of the concerned government official to take necessary action including the registration of the application. If the application does not fulfill the necessary procedure or does not enclose the necessary document the office also has the power to endorse and return back the application instructing him or her to come after fulfilling necessary procedure and enclosing necessary documents. After the petitioner has submitted the application enclosing necessary documents for obtaining citizenship certificate, the District Administration Office Nuwakot has to take necessary decision as per the law over it.	57

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					Therefore, an order of Mandamus has been hereby issued in the name of District Administration Office Nuwakot to verify and register the application submitted by the petitioner Nina Tamang for obtaining citizenship certificate, following the necessary legal procedure in case she comes to do so and for taking necessary action whatever has to be taken pursuant to Article 8(2) (b) of the Interim Constitution of Nepal 2007 and Nepal Citizenship Act, 2006.	
8	067-WO-1249	10th July, 2013	Sita Devi Adhikari et al VS Government of Nepal	Order including Mandamus whichever is required should be issued on the names of the opponents stating to implement or get the naturalized citizenships implemented in practice, which are to be issued on the basis of the provisions made in Article 8 (7) of the Interim Constitution of Nepal, 2063, Clause 5 (2) (3) of Nepal Citizenship Act, 2063. Moreover, Mandamus order should be issued on the name of Home Ministry stating to make decision or get the decision to confer the naturalized citizenships made upon the application furnished by me, Raju Shaiyad Mohammad, of the petitioners, on the date of 2064/11/29, stating "naturalized citizenship should be granted" as per Article 8 (7) of the Interim Constitution of Nepal, 2063, Clause 5 (2) (3) of Nepal Citizenship Act, 2063, and Rule 7 (1) (3) of Citizenship Rule, 2063, as well as upon the applications of all the applicants who have applied for the naturalized citizenships.	In the affidavit submitted by the Home Ministry, it is mentioned that investigation is still going on upon the aforementioned application. From this, the situation is clearly seen that the Home Ministry has committed unjust delay in making decision on the issue as per petition claimed. The analysis made above has justified about this, as well. However, the functions and actions to be accomplished by the opponent, Home Ministry, remained as a body that is supposed to take up public accountability, must be delay-less, transparent and responsible. Hence, from the aforementioned analysis, the situation is seen that the Home Ministry has delayed to make decision on the issue of the claim held in the writ petition; hence, it is decided that order of Mandamus is to be issued on the name of the opponent, the Home Ministry, stating that by accomplishing the work as soon as possible if the work of investigation upon the application for the naturalized Nepalese citizenship furnished by the writ petitioner, Raju Shaiyad Mohammad, is still remaining, to make decision as soon as possible on the issue of what, whether or not the citizenship can be conferred to him.	60
9	069-WO-880	14th March, 2014	Bhola Nagarkoti VS Government of Nepal	An order of mandamus or any other similar, needful order be issued in the name of respondents causing them to issue us, the victim petitioners, citizenship certificates by descent, in the mother's name.	Article 8 (2b) of the Interim Constitution of Nepal, 2007 has prescribed father or mother rather than father and mother. The said article places or and not and after the term father. If it were father and mother instead, one would have not been able to gain Nepali citizenship certificate in this situation. However, as the Constitution has explicitly provided for father or mother, it is deemed that in the event any one between the father and mother is a Nepali citizen, such an offspring may well obtain Nepali citizenship certificate. This being the case, the respondents seem to have misconstrued and misinterpreted	67

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					the express provision of Constitution by denying the petitioners of Nepali citizenship certificate. In this case too, as the father is missing and out of contact till date, and as it is shown from the photocopy of citizenship enclosed in case file that is authenticating that the mother of petitioners is a Nepali citizen and since it has also been corroborated that the petitioners are the offspring of a Nepali citizen Dhana Nagarkoti, a mandamus is hereby issued in the name of respondent District Administration Office, Kathmandu for providing Nepali citizenship certificate to the petitioners from their mother's name as per the laws.	
10	070-WO-0932	9th February, 2015	Dipti Gurung VS Government of Nepal	Taking the daughter together, when I went to the Office of Ward No. 3 of Lalitpur Sub-Metropolitan City, Lalitpur District, where we are living, to get the birth registered, by filling up the form of the information of the birth as per Schedule 2 of Birth, Death and Other Personal Events (Registration) Rule, 2034, we were refused to get registered. We were not given information pertaining to the other alternatives so as to be able to get the birth registered. After then, though I continued to go months after months to the aforementioned Office, taking the daughter along with me, birth was not registered and we were replied with chiding language, stating that daughter's birth would not be registered if there is no citizenship of the father; hence, as there is no other way out, I have been present taking the writ petition.	Apart from the things to be filled up in the Schedule 2 of Birth, Death and Other Personal Events (Registration) Rule, 2034, the parents' descriptions are also included, and it is seen that the incident has not been registered due to the complexity related with this. It is the duty of the state to get the child' birth registered even by accepting to that extent whatever the description is filled up or can be filled up by the one who wishes to get the birth registered. Otherwise, complications arise later. On this issue, order has been issued by the Special Bench of this Court, stating, "Do not refuse to all the children including the children of Badi community, with fathers unidentified, to register their births due to the reason that fathers are not identified."8 Thus, order to get the births registered has been issued by this Court in connection to the children with no identity of fathers, whereas, in order to register the births of the children with fathers unidentified on the basis of the aforementioned order, all the Local Registrars were already given directives on date 2062/10/13 (January 26, 2006 A.D.) so that birth can be registered on the basis of mother's citizenship by writing the description of not identifying in the Chapter of father's descriptions of the information form. Thus, in the condition that order has been issued by this Court to register the birth even in the situation that the children's father is not identified, and directives have been given by the Ministry as per the aforementioned issue; it would not be better to refuse to register the birth taking this issue for granted. Not just to register upon being brought to get the birth registered, but if the work of birth registration can be compulsory, responsible system of governance is felt by the people. Hence, Mandamus is issued on the names of including the opponent, Lalitpur Sub- metropolitan City, stating that if applicant provides whatever the description mentioned in the form of Schedule 2 of Birth, Death and Other Personal Events (Registration) Rule, 2034 or brought, stating of not being able to fill it up, get it registered as it is by accepting that. Moreover, directive order has been issued on names of including the opponent, Office of the Prime Minister and the Council of Ministers, stating to reform or amend the aforementioned provision of Schedule 2, by making revision so that it can be accommodated in the circumstance, like that of the petitioner's,	71

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					that father cannot be identified. By giving the information of the present order to the opponents through the Office of the Attorney General, submit the document file upon doing as per law by striking off the record of case file.	
11	070-WO-0082	13th April, 2015	Yasu Maya Budhathoki Basnet VS Government of Nepal	As per clear provisions made in Article 8 (2) (B) of the Interim Constitution of Nepal, 2063, Clause 3 (1) of the Nepali Citizenship Act, 2063, Rule 3 (1) of Citizenship Rule, 1.2 of (2) of Chapter 2 of Citizenship Certificate Distribution Procedure Directives that mother can grant identity by providing citizenship to her children, order or command including the mandamus order, whichever is needed, should be issued on the name Lalitpur Sub-metropolitan City, Ward No. 13, of the opponents, to provide recommendation to obtain citizenship certificate and on the name of Lalitpur District Administration Office to provide citizenship to my son by descent, by mother's name.	It is seen that the petitioner Bijay Basnet can obtain citizenship of Nepal by descent through the name of his mother, Yashu Maya Budhathoki, from the address Lalitpur district, Lalitpur Sub-metropolitan City, Ward No. 13; it is decided that this mandamus order shall be issued on the name of the opponents, to provide or get the citizenship certificate of Nepal by descent provided to the petitioner by fulfilling the rule and process of law.	76
12	070-WS-0016	N.K.P. 2072, Part 57, No. 9, Decision No. 1459, Pg. 1539, 18th April, 2016	Amrit Kumar sharma VS Government of Nepal	Sub-rule (6) of Nepal Citizenship Rule, 2063 and Point No. (7) of Citizenship Certificate Distribution Directives, 2063 have been inconsistent with including Sub-article (2) (3) of Article 8, Article 10, Sub-article 12, Sub-articles (1) of Article 12, Sub-articles (1), (2), (3) of Article 13, Sub-article (1) Article 22 of the Interim Constitution of Nepal, 2063 and Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063, hence, should be declared invalid and void to the extent of that inconsistency as per Sub- article (1) of Article 107 of the Constitution, and in the situation of the identification made by Prajapati Sharma (Timsina) by attaching his citizenship as per law, Mandamus order should be issued on the names of the opponents, the Home Ministry and the District Administration	The decision made on the date of 2070/4/9 by District Administration Office, Kathmandu, by refusing the provision as per Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063 and Sub-article (6) of Article 8 of the Constitution, avoiding the demand of the petitioner, is not seen to have been based on the Constitution and law. Therefore, it is decided that Sub-rule (6) of Rule 3 of Nepal Citizenship Rule, 2063 and Point No. 10 (7) of Citizenship Certificate Distribution Directives, 2063 are not seen to have been inconsistent with the Sub-article (3) of Article 8, Articles 13, 22 of the Interim Constitution of Nepal, 2063 as well as with Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063; hence, the writ petition shall be quashed up to that inconsistency. Constitutional and legal provision are seen to have been made in Sub-article (30) of Article 8 of the Constitution and Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063, stating that the person found within the borders of Nepal, having paternity maternity not known, shall obtain the citizenship on the basis of descent; hence, the decision made by District Administration Office, Kathmandu, on the date of 2070/4/9 (July 24, 2013 A.D.), and the functions and actions connected with that have been revoked with the Certiorari Order as per Sub-article (2) of Article 107 of the Constitution.	84

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				Office, Kathmandu as per Sub-clause (2) of Article 107 of the Constitution, stating to get the citizenship provided as per law.	No decision is found to have been pronounced by the District Administration Office either, upon whether or not the petitioner shall obtain the citizenship as per the application furnished by the petitioner for the sake of citizenship. If any condition is seen that the petitioner shall not obtain the citizenship, it is the duty of the opponent, District Administration Office, to assist the Court by sending affidavit and authorized documents by mentioning the base and reason of that. By defying the Court order by not sending even the affidavit, District Administration Office, Kathmandu is seen to have not extended the support in the accomplishment of the justice. The defiant Office and its Chief who have not sent the affidavit along with reason and authorized documents as per demanded are supposed to be irresponsible and undisciplined. Such actions can never be acceptable. Send by writing to the official, who made the decision pertaining to the petitioner's citizenship on date 2070/4/9 (July 24, 2013 A.D.) and to the Office, which ignored to send the affidavit, through the Government of Nepal, Home Ministry in order to make aware upon the responsibilities and duties stipulated by the law.	
13	070-WO-0876	29th February, 2016	Kiran Khadki VS Government of Nepal	Our right conferred by the Article 8 (2) (B) Clause 3 (1) of Nepal Citizenship Act, 2063 order, command including mandamus, whichever is needed, should be issued on the name of the opponents to provide citizenship of descent to me, the petitioner Kiran Khadgi, the son of Sarita Khadgi, by mother's name.	No pleading is seen to have been held in the affidavit of the opponent, District Administration Office, Kathmandu that the petitioner cannot or shall not obtain citizenship as per claim, and it is not right to obstruct posing unnecessary complication from providing citizenship certificate to be provided as per law; hence, it is decided that mandamus shall be issued on the name of opponent, District Administration Office, to provide Nepalese citizenship certificate to the petitioner as per claim by fulfilling the process upon immediately calling the petitioner.	92
14	068-WO-0731	15th March, 2016	Sajda Sapkota VS Government of Nepal	For the sake of obtaining citizenship by mother's name, application was furnished by fulfilling the process as per Article 8 (2) (B), Sub-clause (1) of Clause 3 of Nepal Citizenship Act, 063 and Sub- rule (1) of Rule 3 of Nepal Citizenship Rule, 2063, but condition has surfaced to wipe out our identity by the aforementioned oral order given by the opponent, stating that citizenship could be given by mother's name, without even registering the application, and condition has appeared for us to be compelled to live in the stateless situation throughout our lives; hence, order or command including mandamus whichever is needed should be issued giving an order	In the situation of the application furnished by fulfilling the minimum process as per law for the sake of obtaining citizenship, on the ground of the aforementioned precedent propounded by this Court, instead of helping in friendly manner in the sensitive issue such as citizenship, the opponents are found to have made the petitioners lingering by refusing to confer citizenship certificate, pretending this and that. Such work cannot be considered as responsible and legal work. petitioners' mother has possessed the citizenship of Nepal and their father has been disappearing; hence, there is no obstacle present in conferring citizenship by mother's name and mandamus has already been issued before this by this Court on this issue; but, even though all the District Administration Offices are seen to have been circulated, the work of not conferring the petitioners with the citizenship by mother's name is unjust; hence, it is decided that mandamus is supposed to be issued on the name of the opponents to immediately confer them with the citizenship by mother's name. Hence, according to the spirit of the order made in the present case and the order made in the case of Sabina Damai it is decided that directive order shall be issued on	97

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				to provide citizenship by mother's name.	the name of the Government of Nepal to confer and to get the citizenship conferred by mother's name easily in the condition that the citizenship is supposed to be obtained, without posing unnecessary complication, in, regarding this by setting up complaint hearing mechanism under the Ministry of Home Affairs.	
15	071-WO-0903	4th April, 2016	Bipana Basnet VS Government of Nepal	Of the petitioners, I, Bipana Basnet, have been providing patronage of the petitioner, Rinex Basnet, being a single mother. Condition is that my husband has gone away since my son was small, by getting divorced. As per clear provision that mother can provide identity by providing citizenship to her children pursuant to Article 8 (2) (B) of the Interim Constitution of Nepal, 2063, Clause 3 (1) of Nepal Citizenship Act, 2063, Rule 3 (1) of Citizenship Rule, 1.2 of (2) of Chapter-2 of Citizenship Distribution Procedure Directive, order, command including mandamus, whichever is needed, should be issued to provide citizenship to my son by descent by mother's name.	The act of the body or official authorized as per law of not providing citizenship by not explaining any appropriate ground and reason cannot be deemed as legal and appropriate behavior; hence, measures of facilitation and simplification in the act of providing citizenship to the citizens as per legal provision must be looked for, and the act of not providing citizenship or delaying in making decision on providing or not providing citizenship, without decision with reasons, cannot be proper way of implementation of law; hence, it is decided that mandamus order shall be issued on the name of the opponent, District Administration Office, Kathmandu, to make decision immediately regarding the citizenship without depriving of being provided with Nepalese citizenship certificate simply on the ground that the petitioner has wanted to write mother's surname, "Basnet", mentioned in his birth registration and certificates as per petition claim if the description explained or claimed by the petitioner is not seen otherwise, by inquiring what is to be inquired upon as soon as possible, as per the Constitution of Nepal, Nepal Citizenship Act, 2063 and Nepal Citizenship Rule, 2063. Moreover, in connection to the citizens of such nature, particularly whose father, even upon being a Nepalese citizen, has not come into contact or has disappeared, or to those children who are in the condition that their father has hesitated to get them provided with citizenship, and those who wish to obtain citizenship by mother's name by mentioning father's surname as well, this directive order has been issued on the name of the opponent, Ministry of Home Affairs, to arrange necessary provisions by issuing circulation on the names of all the Chief District Officers nationwide not to treat differently or not to discriminate saying mother's or father's name, to make appropriate decision as per law regarding citizenship by facilitating and simplifying any Nepalese citizens who wish to obtain citizenship by mother's name according to the surname petitioner children, of birth registration or other evidence has been submitted, including on the ground including at the time of registration of those personal events, because such Nepalese citizen shall have the right to choose the surname of father or mother or any surname of identity of the ground of the both.	102

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16	071-WO-1025	4th April, 2016	Jayanti Shikari (Khanal) VS Government of Nepal	My right to obtain and make identity by mentioning father's name and by identifying by mother as per constitutional and legal provisions by has been ensured to me, Gopal Khanal, of the petitioners; hence, order, command including mandamus, whichever is needed, should be issued to provide citizenship by identifying by mother.	Due to the condition that citizenship No. 9194/2044, Makwanpur, the mother of the petitioner, Gopal Khanal, has been ready to stay for identification stating that Badri Prasad Khanal, citizenship No. 3640/025 Kathmandu is the father of the petitioner; as father's name is seen to have been mentioned in character certificate and mark sheet of the petitioner, Gopal Khanal, as Badri Prasad Khanal, Bishal Nagar-4 Kathmandu, it is decided that mandamus order shall be issued on the name of the opponent, District Administration Office, Kathmandu, to provide citizenship certificate unless the description explained or claimed by the petitioner is not seen otherwise, by adopting the procedure including examining spot investigation as soon as possible as per Rule 3 (2) (A) and (B) of Nepal Citizenship Rule, 2063 as well. Moreover, in connection to the citizens of this nature, particularly, to those whose father, upon being a Nepalese citizen, has not come into contact or has been disappeared or to those who are in the condition of the fathers being reluctant to get their children provided with citizenship, and to those who wish to obtain citizenship mentioned father's name, surname as well, if mother or close relative give consent to bear liability by staying for identification, it is seen necessary to pay proper attention towards what, what kinds of appropriate and proper measure can be there to ease and simplify regarding providing citizenship to any Nepalese citizens who want to obtain citizenship adopting necessary and appropriate procedure of including Rule 3 (2) of Citizenship Rule, 2063. Generally, in order to make the legal provisions to obtain citizenship by the citizens simplified, easy and comprehensible, by paying attention to the following matters, besides other things, this directive order has also been issued on the name of the opponent, the Ministry of Home Affairs to arrange necessary provisions to provide citizenship certificate easily by issuing circulation on the names of all the Chief District Officers nationwide.	108
17	2069-WO-0153	N.K.P. 2073, No. 9, Decision No. 9673, Pg. 1682, 12th May, 2016	Diwakar Chhetri VS Government of Nepal	As per the Interim Constitution of Nepal, 2063 and Nepal Citizenship Act, 2063 and international human rights documents, our mother was a Nepalese citizen at the time of our births; hence, despite having our right to obtain citizenship of descent, contrary to this, while going to get recommendation of the citizenship and the citizenship by mother's name, we were verbally refused to be given recommendation and the citizenship; hence, we have been deprived of our	It is seen that decision is supposed to be made after conducting investigation regarding whether the petitioners are the person who obtain citizenship as per Clause 3 (1) of the Nepal Citizenship Act, 2063 or are the persons who can obtain citizenship as per Clause 3 (2) and Clause 5 (2) of the same Act or not; hence, it is decided that mandamus order shall be issued on the names of the opponents District Administration Office, Lalitpur and previous Kitani presently Godawari Village Development Committee, Lalitpur to decide by conducting necessary investigation and provide its information to the petitioners as well.	115

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				constitutional right, our right to get identity, right to get higher education, right to employment, right to business, right to residence, right of equality, right of nationality, including right to make choice of obtaining citizenship through whose name out of father or mother's name; hence, order or command should be issued on the name of opponents to provide recommendation to get citizenship to us victims petitioners by mother's name and give and get the citizenship given too, and issue order or command including mandamus, whichever is needed, so as to interpret in connection to the other victims like us who remain across the country.		
18	072-WO-0520	29th August, 2016	Kriti Thapa VS Government of Nepal	According to Article 11 (2) (B) and Article 12 of the Constitution of Nepal, Clause 3 (1) of the Citizenship Act, 2063, Rule 3 (1) of Citizenship Rule, 2063, and has been against Article 15 of International Human Rights, Article 24 of International Covenant on Civic and Political Right, 1966, Article 7 of Convention on the Rights of the Children, including Article 9 of Convention on Elimination of all forms of Discrimination Against Women, 1979, order an command including mandamus, whichever is needed, should be issued to provide citizenship by mother's name as per law and to provide citizenship by descent by mother's name so as to be interpreted in connection to the victims like us across the country.	The matter that Kabita Thapa, the mother of Kriti Thapa, is a Nepalese citizen also has been justified, and the petitioner, Kriti Thapa, is seen to have been born in Nepal from the Nepalese citizen, Kabita Thapa; hence, it is decided that mandamus order shall be issued on the name of the opponent, Kathmandu Metropolitan City, Ward No. 5, Ward Committee stating not to refuse to provide recommendation for the sake of citizenship if the petitioner submits mother's citizenship and if she submits evidence to ensure birth, and on the name of District Administration Office, Kathmandu not to refuse to provide citizenship by mother's name if the recommendation and the replica copy of the citizenship of the mother's name is submitted.	119
19	071-WO-1076	29th August, 2016	Prashant Biswas VS District Admin. Office, Sunsari	Mandamus order should be issued on the names of the opponents as per Article 8 (1), 8 (2) (B), Articles 12 (1), 13 (1) of the Interim Constitution of Nepal, 2063, Clause 3 of Nepal Citizenship Act, 2063 and including the writ petition decided on by the esteemed Supreme Court regarding (N.L.M. 2068 D.No. 8557 Number 2 P. 247).	The matter that Sabitri Shrestha, the mother of the petitioner, Prashant Bishwas, is a Nepalese citizen is also justified, and the petitioner, Prashant Bishwas, is seen to have been born in Nepal from Nepalese citizen Sabitri Shrestha; hence, it is decided that mandamus order shall be issued on the name of District Administration Office, Kathmandu not to refuse to provide citizenship by mother's name if the petitioner furnishes application by submitting mother's citizenship.	124

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20	070- WO- 0817	29th August, 2016	Laxmi Lama VS Government of Nepal	It has been against the provision of Article 8 (2) (B) of Part 2 of the Interim Constitution of Nepal, 2063 that if father or mother of a person was a citizen of Nepal at the time of his/her birth, such person shall be a Nepalese citizen by descent, and the provision of Clause 3 of Nepal Citizenship Act, 2063 to obtain Nepalese citizenship; moreover, it has been opposite to Article 15 of Universal Declaration on Human Rights, 1948, Article 24 of International Covenant on Civic and Political Rights, 1966, Article 7 of Convention on the Rights of the Children, including Article 9 of Convention on the Elimination of all Forms of Discrimination Against Women, 1979; hence, order, command including mandamus, whichever is needed, should be issued to provide citizenship by mother's name as per law, and to interpret it in connection to the victims across the country like us.	The matter that Bichchhi Tamang, the mother of petitioners, Laxmi Lama and Sharmila Lama, is a Nepalese citizen is also justified, and the petitioners are seen to have been born in Nepal from Nepalese citizen, Bichchhi Lama; hence, it is decided that mandamus order shall be issued on the name of Office of Kathmandu Metropolitan City, Ward No. 11, and on the name of the opponent Ministry of Home Affairs and under it, District Administration Office, Kathmandu not to deprive of citizenship on the ground that they have not submitted father's citizenship, but to provide citizenship, as per claim, if the petitioners establish in any way that they are residing within its jurisdiction and if they submit mother's citizenship. It has been exposed that circulation has been made to all the District Administration Offices as per the decision made by this Court on the writ petition of aforementioned Sabina Damai on the issue that citizenship can be obtained by mother's name; hence, it seems that re-order is not supposed to be issued on the names of all the District Administration Offices.	129
21	069- WO- 0735	29th August, 2016	Shiwani Kharel VS Government of Nepal	Both my father and mother have been Nepali citizens. As the father remained out of contact without information, were brought to her parental home by the mother. Provision has been introduced on Section 3(1) of the Nepal Citizenship Act, 2007 stipulating that: In case either father or mother is a Nepali citizen at the time of birth of his or her offspring, then such offspring shall be a citizen of Nepal by descent and whereas I requested the different bodies for the co- operation so that I could have obtained citizenship by the name of my father, he has been rejecting till present to confer citizenship to me and remained out of our contact and that due to lack of citizenship I applicant, have been deprived of filling up the form in order to pursue higher education and got deprived of the basic human rights of the education. A Mandamus be issued so that	The act of statutorily authorized agency or official denying someone of citizenship in the absence of any plausible reason and basis cannot be deemed as legitimate and proper. It is rather supposed to explore ways for assistance and simplification in granting citizens with citizenship as per the legal provisions. an order of mandamus is hereby issued in the names of respondent District Administration Office, Kathmandu, to promptly decide for the citizenship after holding examination of the matters required as per Nepal Citizenship Act, 2007 and Nepal Citizenship Rules, 2007 at the earliest and in case the petitioner applies for acquiring citizenship by disclosing the name of father and address of mother in line with the certificate, and if the mother attests to the same at the office, then let the needful matters be inquired and let a decision on awarding citizenship be made forthwith by not depriving the petitioner from Nepali citizenship certificate and issuance of the recommendation for the citizenship just on the basis that she intended to write the name of father and address of mother as recorded certificate.	135

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				I the victim petitioner Siwani Kharel be granted citizenship in the name of the mother and the let the essential order be issued to the nationwide entire Offices of Village Development Committees, Metropolitan City, Sub-Metropolitan cities, Municipalities and their relevant ward offices, via the Ministry of Home Affairs and to the all 75 District Administration Offices with the interpretation that shall be applicable to the victim like me.		
22	071-WO-0709	N.K.P. 2073, No. 9, Decision No. 9687, Pg. 1833, 29th August, 2016	Srijan Kharel VS Government of Nepal	It has been against the provision of Article 8 (2) of Part 2 of the Interim Constitution of Nepal, 2063 that if father or mother of a person was a citizen of Nepal at the time of his/her birth, such person shall be Nepalese Citizen by descent, and the provision of Clause 3 of Nepal Citizenship Act, 2063 that Nepalese citizenship shall be obtained by descent, as well as against the Article 15 of Universal Declaration of Human Rights, 1948 and Article 24 of the International Covenant on Civic and Political Rights, 1966, Article 7 of Convention on the Rights of Children, including Article 9 of the Convention on Elimination of all forms of Discrimination Against Women, 1979; hence, order, command including mandamus, whichever is needed, should be issued to provide citizenship by mother's name so as to interpret in connection to the victims across the country.	The matter that Sharmila Gautam, the petitioner's mother, Srijan Kharel, is a Nepalese citizen is also justified, and the petitioner, Srijan Kharel, is seen to have been born in Nepal from Nepalese citizen mother; hence, it is decided that mandamus order shall be issued on the name of District Administration Office, Kathmandu not to refuse to provide citizenship by mother's name if the petitioner furnishes application by submitting mother's citizenship, attaching with it the evidence as far as available. It has been exposed that circulation has been made to all the District Administration Offices as per the decision made by this Court on the writ petition of aforementioned Sabina Damai on the issue that citizenship can be obtained by mother's name; hence, it seems that re-order is not supposed to be issued on the names of all the District Administration Offices.	141
23	069-WO-1090	29th August, 2016	Rojan Uprety VS Government of Nepal	After my pregnancy and before delivery, my husband Prakash Uprety went outside Kathmandu for work but never returned. My mother Puja Subedi (Uprety) has been providing me with nurture, education and healthcare to I, Rojan Uprety, one of the petitioners.	The act of statutorily authorized agency or official denying someone of citizenship in the absence of any plausible reason and basis cannot be deemed as legitimate and proper. It is rather supposed to explore ways for assistance and simplification in granting citizens with citizenship as per the legal provisions. an order of mandamus is hereby issued in the names of respondents District Administration Office, Kathmandu and Office of Kathmandu Metropolitan City, Ward No. 34 to examine the matters required as per Nepal	147

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				Thousands of Nepali people have been suffering from lack of citizenship across Nepal, a mandamus order be issued in so as to interpret their plight also and let the order be distributed as circular for implementation to the entire offices of Village Development Committees, Metropolitan City, Sub-Metropolitan cities, municipalities and their relevant ward offices, via the Ministry of Federal Affairs and Local Development; and to the all 75 District Administration Offices via the Ministry of Home Affairs.	Citizenship Act, 2007 and Nepal Citizenship Rules, 2007 at the earliest and in case the petitioner applies for acquiring citizenship by disclosing the name of his father and address of mother, and if the mother attests to the same at the office, then let the needful matters be inquired and let a decision on awarding citizenship be made forthwith by not depriving the petitioner Rojan from Nepali citizenship certificate just on the basis that he intended to write the name of father and address of mother as recorded on his birth registration certificate and academic certificate.	
24	071-WO-0710	29th August, 2016	Surendra Poudel VS Government of Nepal	We were born in Nepal from a Nepalese citizen mother, we have been stateless due to being deprived of obtaining citizenship, and are compelled to be deprived of human rights including the right of identity and right of nationality and right to equality, and it has been against the provision of Article 8 (2) of Part 2 of the Interim Constitution of Nepal, 2063. hence, order, command including mandamus, whichever is needed, should be issued to provide citizenship by mother's name as per law so as to interpret it in connection to the victims across the country like us.	It is justified that Usha Chhetri, the mother of the petitioners, Surendra Paudel, Rusha Paudel and Sujana Paudel, is a Nepalese citizen, and the petitioners are seen to have been born in Nepal from the Nepalese citizen, Usha Chhetri, and they can obtain citizenship by mother's name; hence, it is decided that mandamus order shall be issued on the name of Office of the Ward No. 12 of Kathmandu Metropolitan City, not to refuse to provide recommendation, saying that father's citizenship has not been submitted, if the petitioners submit mother's citizenship, and on the name of the opponent, District Administration Office, Kathmandu not to deprive the petitioners of citizenship on the ground that father's certificate has not been submitted in the situation that the petitioners have clearly mentioned in the petition that they have been residing at maternal uncle's home and mother's citizenship has been submitted, and to provide citizenship certificate as per claim.	153
25	071-WO-0990	1st September, 2016	Mala Khadka Ghimire VS Government of Nepal	Since the father has refused to get the birth registered, the birth of my daughter was not registered order and command including mandamus, whichever is needed, should be issued on the name of the opponent, the opponent the Office of Himganga V.D.C. to register or get the birth of the daughter registered by me, the applicant, being an informant.	Since birth may be registered on the basis of the description furnished by mother who provides information even in the condition that the father is not traced or refuses, in the present issue, in case father's name and address is clearly mentioned, the adult mother may furnish information in the absence of the chief person or father of the family who is to provide information as per Section 4 (1) (a) of Birth, Death and Other Personal Events Registration Act, 2033, and though the form filled up as per Section 5 of the same Act could be registered by examining it, the act or behavior of not registering the form as per Schedule and refusing to register birth appears as contrary to the legal provision and directives mentioned. Hence, from the analyzed basis and legal provisions, condition seems that Nepali citizen woman may register the births of her children with the status of single mother as well, and in	159

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					case claim is laid by clearly revealing father's name and address, it seems that petitioner mother may obtain birth registration of the daughter by becoming informant; hence, it is decided that mandamus order shall be issued on the names of the opponents not to refuse to register the birth simply because the chief person of the family is not present or father refuses to register the birth, and do the works including recommendation whichever is needed as well as registering the birth as per law, if demand is made by revealing the descriptions including the birth for the sake of birth registration.	
26	070-WO-0178	12th December, 2016	Kopila Magar VS Government of Nepal	<p>I, Samin Thapa, of the petitioners, am being nurtured, provided with education, health treatment by my mother, Kopila Magar, and I have grown up, raised and been educated under the single mother since I was born. I have not seen the face of the father yet nor have I heard even his name.</p> <p>I, Kopila Magar, of the petitioners, being a single mother of the daughter, have been providing her with patronage. The condition is that I was raped and left out by an identified person and has not been found even upon searching for.</p> <p>We, the petitioners, are the persons deprived of the right to obtain citizenship and to provide citizenship through own name, hence, have come to make a plea for the justice, carrying this writ petition, requesting that mandamus order or other order, command, whichever is needed, for the sake of feeling of the acquisition of justice by guaranteeing equal right to obtain citizenship and to provide own children with citizenship through own name that has been granted by the constitution of Nepal as per 107 (2) of the Interim Constitution of Nepal, 2063.</p>	<p>Provision has been made in Article 18 of the Constitution of Nepal regarding the right to equality. The right of Article 18 is a fundamental right to be obtained by all the citizens without discrimination. In Article 18 (1), it is guaranteed that all citizens shall be equal before law and nobody shall be deprived of the equal protection of law. Similarly, the matter that nobody shall be discriminated based on gender has been mentioned in Article 18 (2). In addition to this, in Sub-article (1) of Article 38, provision has been made that every woman shall have the equal lineage right without gender- based discrimination. Successor of the lineage and the right of identity based on this also fall within equal lineage right.</p> <p>it is decided that mandamus order shall be issued on the name of opponent Ward Office to provide recommendation if the petitioner, Samin Thapa, demand recommendation by submitting mother's citizenship, and on the name of District Administration Office, Kathmandu to provide citizenship by mother's name as per law if application is furnished including necessary documents.</p>	165
27	071-WO-0033	23rd January, 2017	Aditya Gupta VS Government of Nepal	I should be provided Nepalese citizenship certificate by issuing order command note including mandamus, whichever is needed, on the names of the opponents to provide Nepalese citizenship	Naturalized citizenship can be provided to the children, who have permanent domicile in Nepal upon being born in Nepal from the Nepalese citizen woman, who is married to a foreign citizen, if they have not obtained citizenship of the foreign country based on the father's citizenship is a very sensitive matter linked with personal and national identity of a person;	170

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				certificate by immediately initiating process regarding which of the descent or naturalized citizenship is to be obtained based on the document evidence.	hence, no person shall have to be rendered in the condition of without citizenship. it is justified in the present petition that Sarita Pradhan, the mother of the petitioner, Aditya Gupta, was a Nepalese citizen at the time of his birth, upon obtaining Nepalese citizenship, and upon being born in Nepal, this petitioner has been permanently residing in Nepal; and there is not condition that this petitioner has obtained citizenship from his father's country of citizenship, India either; hence, it is seen that he shall obtain naturalized citizenship of Nepal. Hence, it is decided that mandamus order shall be issued on the name of the opponent previously the Office of the Village Development Committee (presently the Office of the Ward No. 15 of Gokarneshwar Municipality) as well as on the name of the Secretary of the same to provide recommendation to him for the sake of obtaining citizenship certificate and on the name of the Government of Nepal, Ministry of Home Affairs and District Administration Office, Babarmahal to provide citizenship certificate to him based on documents including the aforementioned recommendation by fulfilling necessary process as per law.	
28	072-WO-0629	18th May, 2017	Deepti Gurung VS Government of Nepal	Of the petitioner, I Deepti Gurung and my daughter Neha Gurung have been living in ward No.3 of Lalitpur Sub-Metropolitan City of Lalitpur district. Of the petitioners, the father of mine, Neha Gurung, has not been traced and mother is a Nepalese citizen. The Constitution and law have made clear provision that if either of the father or mother is a Nepalese citizen, his/her child shall be the citizen of Nepal; however, because the petitioner's father has not been identified, I have been deprived of obtaining the citizenship certificate of Nepal, and due to the oral order of the opponents, condition has emerged to expunge my identity. it is requested to issue order of mandamus including other appropriate orders that I should be provided with citizenship through my mother's name. Also, issue the order of mandamus and other required appropriate orders in the names of the opponents, stating that The clause stating "resident of... address not traced" in the third line of family record form and stating "daughter of Mr. Thegan Nabhaeko [not identified]" should be revoked with the order of certiorari.	According to Article 11(5) of the Constitution of Nepal and Section 3 (1) of Citizenship Act 2063, any person born in Nepal from mother or father either one born in Nepal is eligible for citizenship of Nepal. As the Constitution and laws have clear provisions that the person whose one of the father or mother is a citizen of Nepal at his or her birth, who is residing in Nepal and whose father has not been identified, shall be provided with the citizenship of Nepal by descent and it is being clearly seen from the evidences attached to this case file that these petitioners are the Nepalese citizens who were born in Nepal from Nepalese mother, it is not just to create situation to wipe out the identity by depriving the daughter, Neha Gurung, of the petitioners, of obtaining citizenship certificate of Nepal, simply because father has not been identified. obtaining citizenship through mother's name, there are clear provisions made in the Constitution and Nepal Citizenship Act; furthermore, directive orders have also been issued by the Supreme Court. It is equivalent to the breach of law by the law implementation body to refuse citizenship through mother's identity in different pretexts. Hence, it is also a responsibility of the Government of Nepal, and all the concerned bodies under it, to extend support to those who wish to obtain citizenship through mother's name by fulfilling prescribed procedures as per law, therefore, it appears that their responsibilities have to be readily implemented practically.	175

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29	069-WO-1041	4th June, 2017	Sun Kumari Magar Tamang VS Office of Prime Minister and Council of Ministers	The Articles 8(2)(b), 12(1), 13(1)(2)(3) and 20(1)(3) of the Interim Constitution of Nepal, 2007; Section 3(1) of the Nepal Citizenship Act, 2007; and Clause 2(4) (5) of the Guidelines on the Distribution of Citizenship, 2007 have been flouted leading to an infringement as to the enjoyment of my constitutional rights. Hence, pursuant to the above constitutional and statutory provisions and the court decision, I hereby pray to the Court for issuing an order of mandamus and any other relevant order in the name of respondents as per Article 107(2) of the Interim Constitution of Nepal, 2007 instructing them to provide me - the writ petitioner Sun Kumari Magar Tamang - with the recommendation as well	The petitioner seems to have filed an application at the Office of Ward No. 1 of Dhankuta Municipality, seeking recommendation for the purpose of obtaining citizenship certificate. As such, that Municipality called an inquiry on 15.11.2011 at the presence of local individuals which yielded a report. In the answer no. 5 of that inquiry report, the persons in witnesses have written down that the petitioner has not yet gained a citizenship certificate. Though the inquiry report states that recommendation for citizenship to the petitioner by establishing respondent Ongud Tamang as her husband could not be given; the court verdict that already held her as the spouse of respondent Ongud Tamang, is not yet proved otherwise. Thus, it may lead to a situation whereby the petitioner will be deprived of obtaining her partition share in the lack of citizenship and the execution of court verdict will also become challenging. Considering these circumstances, as the inquiry report made on 15.11.2011 by the Office of Ward No. 1 of Dhankuta Municipality amounts to a breach of right of the petitioner to acquire citizenship and property, the action and inquiry report dated 15.11.2011 is hereby annulled. Now, an order of mandamus is hereby issued in the name of respondents, pursuant to Article 107(2) of the Interim Constitution of Nepal, 2007 and Article 133(2)(3) of the Constitution of Nepal instructing them to grant the petitioner citizenship certificate by establishing her as the wife of respondent Ongud Tamang, in following the spirit of verdict in the partition case, if she applies before the District Administration Office, Dhankuta by enclosing the copy of verdict of that case.	181
30	073-WO-1115	21st August, 2017	Sarthak Raut VS Government of Nepal	I, the petitioner Sarthak Raut, was born on date 2051/10/21 (February 4, 1995 A.D.) on behalf of my parents, Krishna Raut (C.C.No. 35026/1318, D.A.O., Chitwan), permanent resident in Chitwan district, Mangalpur V.D.C., Ward No. 1 upon being born in Udaypur district and Samundra Pariyar, resident of Chitwan district, Mangalpur V.D.C., Ward No. 1. Since I attained maturity, application was furnished on date 2073/10/4 (January 17, 2017 A.D.) to get citizenship by descent provided, the Ward concerned endorsed with rejection stating that recommendation could not be provided for the sake of citizenship certificate as there were grounds of the father's C.C. and birth; and	Both of his father and mother had obtained citizenship before the commencement of this Constitution, and even if such citizenship certificates are by birth, it seems that the Constitution itself has made clear provision that the child of such citizens may obtain Nepali citizenship by descent. The petitioner's parents both seem to have obtained citizenship of Nepal before the commencement of the Constitution of Nepal. It seems that the petitioner's father has obtained citizenship certificate by birth and mother has obtained citizenship certificate of Nepal by descent. In the present situation, it cannot be said otherwise to the matter that this petitioner must obtain Nepali citizenship by descent. Due to the provision of Section 3 of Nepal Citizenship Act, 2063 too, no restriction seems to have been imposed upon this petitioner against obtaining Nepali citizenship certificate by descent. On the ground of constitutional and legal provisions analyzed above, conditions appears that the petitioner may obtain Nepali citizenship by descent. As it is contrary to procedural norm to cross the Constitution and law by the decision or circulation of the Ministry; hence, it seems that the letter of District Administration Office, Chitwan of the date of	186

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				<p>information was provided for the petitioner through the letter of L.No. 073/074 D.No. 4116 of the date of 2073/10/5 (January 18, 2017 A.D.) that information had been given in accordance with the order that citizenship by descent could not be presently provided for the children of the persons who have obtained the citizenship certificate by birth, as per the circulation of the Ministry of Home Affairs (Citizenship Monitoring and National Identity Card Management Section) of D.No. 491 of the date of 2070/12/20 (April 3, 2014 A.D.). Hence, by revoking the order and the letter of the stated date 2073/10/5 (January 18, 2017 A.D.) and including the circulation of the Ministry of Home Affairs mentioned on it, petitioner's constitutional and legal right should be enforced by issuing mandamus or other appropriate order to provide or get the Nepali citizenship certificate provided for the petitioner.</p>	<p>2073/10/5 (January 18, 2017 A.D.) that the petitioner could not be provided with the citizenship certificate by descent contrary to the provisions of Constitution and law, as per the circulation of the Ministry of Home Affairs of the date of 2070/12/20 (April 3, 2014 A.D.), the stated correspondence has been revoked with the certiorari order. To impose prevention or restriction upon the use of the rights and powers, which have been conferred by the constitution and law, by government body shall be contrary to the rule of law and jurisprudential norm.</p>	
31	074-WO-0161	8th January, 2018	Bhani Maiya Shakya (Bhikchhu) VS Government of Nepal	<p>I, the petitioner, Karan wanted to make my identity by using the name of my mother Bhani Maya, the petitioner and when I, Bhani Maya went to make identity of my child by name I was returned back time and again by saying that, such law has not been introduced. Article 10 (1) of the constitution makes provision that no Nepali citizen shall be deprived of right to obtain citizenship and Article 11 (2) (B) makes the provision that in case the father or mother of newly born has been Nepali citizen at the time of birth the person as such shall be held Nepali citizen on the basis of descent. Section 3 (1) of Nepali Citizenship Act, 2063 has recognized father or mother under the definition of descent making provision that in case the father or mother of newly born has been the</p>	<p>This writ petitioner Karan Bhusan Shakya seems to be a person qualified to acquire Nepalese citizenship by descent. Therefore, the decision of District Administration Office, Kathmandu reached contrary to the constitution and law mentioning that the petitioner Karan Bhusan Shakya could not be provided with the Nepalese citizenship certificate on descent has been hereby declared void. it is held that the mandamus order shall be issued to the opponent District Administration Office, Kathmandu to provide Nepali citizenship certificate on the basis of Regulation as well inquiring upon the essential matters on prompt basis upon finding out the content shown by the petitioner Karan Bhusan Shakya has not been otherwise. Whereas writ petitioner Bhani Maiya Shakya seems to have become mother prior to the establishment of marital relationship being unmarried mother and the writ petitioner Karan Bhusan Shakya has been attempting to make identity by the name of his mother Bhani Maiya Shakya and the constitution and law as well have protected his right upon viewing the said context, it is held that the mandamus has been issued to the opponent Ministry of Education, District Education Office, Kathmandu and National Examination Board Sanothimi as well to deduct name of grandfather stated in the column of father of the academic certificates of the writ petitioner Karan Bhusan</p>	190

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				<p>citizen of Nepal at the time of birth, such person shall be held Nepali citizen by descent. As the law provides right to select from whose name the citizenship shall be taken to the person receiving citizenship I Karan Bhusan Shakya shall be provided citizenship in the name of my mother petitioner Bhani Maiya Shakya as descent removing the name of my grandfather in the academic qualification certificates of I, petitioner Karan Bhusan Shakya on the column of father's name and maintaining the name of Bhani Maiya Shakya, the petitioner and mandamus order shall be issued to the opponent to do cause to do the same.</p>	<p>Shakya and induct the name of the mother the writ petitioner Bhani Maiya Shakya.</p>	
32	073-WO-01362	8th February, 2018	Neha Das VS Government of Nepal	<p>We petitioners, our father Nanda Das obtained his citizenship by birth and our mother Padam Maya Sunuwar obtained citizenship by decent. As we have matured the age to qualify for citizenship, we were returned with rejection saying that prior to obtainment of citizenship certificate by our father we, the petitioners have been born and the citizenship of father has not been on the basis of descent but on the basis of birth so that we the petitioner could not acquire citizenship on the basis of descent. Therefore, the rejection order dated 2074/03/06 (20 June, 2017) of the District Administration Office, Kathmandu over the petition under Schedule-1 of ourselves with the entire documents from the District Administration office shall be declared void by the order of certiorari and let the order of mandamus be issued to the opponent Home Ministry and District Administration Office, Kathmandu so that we the petitioners shall be provided with the descent citizenship. In addition, the mandamus</p>	<p>In case the father and mother both, of the petitioner have acquired the citizenship of Nepal prior to the commencement of this constitution and despite the fact of being such citizenship to be based on birth the offspring of the citizen as such have been entitled for the obtainment of Nepali citizenship on the basis of descent, the constitution has clearly made provision as such. Both the father and mother of the petitioners have obtained the Nepali citizenship certificate prior to the commencement of the constitution of Nepal. it could not be termed otherwise that these petitioners have been entitled to acquire Nepali citizenship certificate on the basis of descent.</p>	195

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				and other appropriate order be issued to circulate to all the District Administration offices through the Home Ministry with the interpretation applying to all the victims like us of all over the nation.		
33	074-WO-0508	16th April, 2018	Bobby Thapa VS Government of Nepal	The provisions according to the provisions made by Articles 10 (1), 11 (2) (b), 12 of the Constitution of Nepal allows to obtain citizenship by descent with the name of mother or father have been made in Section 3 (1) of Nepal Citizenship Act, 2063. I, the petitioner Iva Rajauriya, have not got the citizenship upon being identified by my mother; hence, I am being deprived of right relating to equality, right to obtain citizenship, right to employment, right to do business chosen by me, right of education to achieve higher education, right to think with freedom, right of property, right to choose residence conferred by the Constitution, and right to equality, right to nationality conferred by International Manifesto on Human Rights, and the right to achieve my identity; hence, by revoking with certiorari order the sanction order made by the official of the opponent, District Administration Office to submit by getting marriage registration attached, order or command including mandamus order, whichever is necessary, should be issued to provide my daughter with the citizenship certificate based on descent from my address by identifying my me, her mother Bobby Thapa of the petitioners.	While looking into the constitutional and legal provisions quoted above, provision does not seem to have been made to submit marriage registration certificate of Nepali father and mother for the sake of obtaining Nepali citizenship certificate by descent. It is seen from the copy of the parent's citizenship that both the parents acquired citizenship through decent. the applicant seems to have submitted all the documents needed for obtaining citizenship by descent, along with the application, pursuant to Sections 3 and 8 of Nepal Citizenship Act, 2063 and Rule 3 of Citizenship Rule, 2063. It neither seems legal nor wise to deem otherwise to these evidences submitted along with the application by the applicant, stating that citizenship certificate should be granted by descent. For the sake of doing any work as per prevailing law, when conditions prescribed by law have been fulfilled and rule is attained by the office bearer or the body to whom legal duty and responsibility has been assigned for the sake of doing such work, it does not appear just and legal to refuse or delay to do such work by making any other pretensions.	200
34	072-CI-0718	(14th May, 2018)	Lucky Sharma VS District Admin. Office, Makwanpur	I obtained the citizenship of from the opponent, District Administration Office, Makawanpur by submitting necessary documents, including the citizenship of the mother, Indu Kumari Thapa as per the Citizenship Act and Rule; but, the Section Clerk of the	Mandamus order should be issued on the names of the opponents to return the genuine citizenship obtained by him; whereas, there were the affidavits of including the opponent District Administration Office, including that evidence and Nepali citizenship certificate revealing the birthplace and date of birth of the petitioner's father did not seem to have been submitted; hence, the Nepali citizenship certificate provided for the petitioner by descent was cancelled	206

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				<p>Citizenship Section of the opponent Office called me via phone on the following day, i.e. 5th (March 19), telling me to go taking the citizenship because signature was missing in my citizenship application; I went to the opponents Office on that day taking my citizenship and submitted it but he situation is that he has not returned the citizenship to me. I went to demand the genuine copy of my Nepali citizenship certificate, attaching along with my application the photocopy of the citizenship certificate obtained by me, I furnished the application to the opponent Office mentioning the same description, stating that the stated citizenship certificate, which I received from the opponent Office as per rule, should be returned but the officer of Citizenship Section, was dilly dallying saying that the Chief District Officer was busy in the relief work of earthquake victims. The opponents have refused to provide me with the citizenship of Nepal which I had obtained by fulfilling legitimate process; hence, Mandamus order should be issued to return my genuine Nepali citizenship certificate of my name, which has been seized by the opponents.</p>	<p>with the decision of the date of 2071/12/08 (March 22, 2015 A.D.), from the affidavits of the opponents, it seemed that the Nepali citizenship certificate which was said to have been obtained on the basis of descent by the petitioner, Lucky Sharma, and demanded by him was cancelled with the decision of the opponent, District Administration Office, Makawanpur of the date of 2071/12/08 (March 22, 2015 A.D.); hence, it is decided that mandamus order was not supposed to be issued as per petition claim; writ petition should be revoked. There is the condition that, being dissatisfied with that decision, appeal has been filed in this Court on behalf of the petitioner stating that the order of the stated Appellate Court, Hetauda is contrary to the legal and constitutional provisions of Nepal Citizenship Act, 2063, the Interim Constitution of Nepal, 2063, the Constitution of Nepal, 2072 and the precedents propounded by this Court, hence, should be revoked. the document files including the present appeal and the stated writ petition have been simultaneously submitted today for the sake of decision; and, on the stated mandamus with certiorari writ petition of 072-WO-0630, by revoking with the certiorari order the decision made by District Administration Office, Makawanpur, Hetauda to cancel the Nepali citizenship certificate obtained by this appellant on the basis of descent, by deeming that mandamus would also be issued on the name of District Administration Office, Makawanpur to issue Nepali citizenship certificate by descent on the name of this petitioner, and upon the issue of the remedy demanded, remedy has been received while making order from this Court today.</p>	
35	074-WO-0518	13th September, 2018	Arjun Kumar Shah VS Government of Nepal	<p>The Constitution of Nepal, 2072 was promulgated while the case filed by me for the sake of obtaining Nepali Citizenship by descent as per Article 8 (2) of the Interim Constitution of Nepal, 2063 was sub judice in the esteemed Supreme Court; hence, this writ petition has been filed to obtain Nepali citizenship as per Article 11 (7) of the Constitution of Nepal. on the basis of the Constitution of Nepal, prevailing law and the precedents propounded by the esteemed Court, order should be issued as per Article 133 (2), (3) of the Constitution of Nepal.</p>	<p>It seems that Mithila Kumari, mother of the petitioner, Arjun Kumar Sah, is a Nepali citizen by descent, and that this petitioner has been permanently residing, studying in Nepal upon being born in Nepal, and from the pleading held stating that he has not obtained citizenship by father's name either, because his father has not had any citizenship of any country either, it seems that he can obtain Nepali citizenship. In such a situation, it is decided that mandamus order shall be issued on the name of the opponent district Mahottari, Office of Matihani Municipality, Ward No. 8 to provide recommendation by doing as per law if the petitioner makes demand for recommendation for the sake of citizenship certificate, and on the name of the Government of Nepal, Ministry of Home Affairs and District Administration Office, Mahottari to provide him with citizenship certificate by fulfilling the process as per law on the basis of other necessary documents including the stated recommendation.</p>	210

Supreme Court, Division Bench

Hon'ble Justice Khil Raj Regmi

Hon'ble Justice Gauri Dhakal

Order

Writ No. 3021 of the Year 2061

Advocate Gomati Sunar, resident of Kathmandu Metropolitan City Ward No. 10 on her own behalf and authorized by Dil Bahadur Bishwokarma, president of <i>Dalit</i> NGO Federation, situated at Kathmandu Metropolitan City Ward No. 1	1	
Advocate Bimal Bishwokarma, resident of Kathmandu Metropolitan City ward No. 10 New Baneshwor, Kathmandu	1	
Advocate Luma Singh Bishowkarma, resident of the same address	1	Petitioners
Advocate Mamita Nepali, resident of the ward No. 1 of the same Metropolitan City	1	
Advocate Rajan Sunar, resident of the ward No. 32 of the same Metropolitan City	1	
Advocate Bhoj Man Lamgade, resident of Jirmale V. D. C. ward No. 4 of Ilam District	1	
Vs		
Prime Minister and Officer of the Council of Ministers, Singha Durbar, Kathmandu	1	
His Majesty's Government, Ministry of Home Affairs, Singha Durbar, Kathmandu	1	
His Majesty's Government, Ministry of Home Law, Justice and Parliamentary Affairs Singha Durbar, Kathmandu	1	
His Majesty's Government, Ministry of Local Development, Shree Mahal Lalitpur	1	
District Administration Office, Ilam	1	
District Administration Office, Panchthar	1	
District Administration Office, Taplejung.....	1	
District Administration Office, Jhapa	1	
District Administration Office, Morang	1	
District Administration Office, Sunsari	1	
District Administration Office, Dhankuta	1	
District Administration Office, Tehrathum.....	1	
District Administration Office, Sankhuwasabha.....	1	Respondent
District Administration Office, Bhojpur.....	1	
District Administration Office, Solukhumbu.....	1	
District Administration Office, Okhaldhunga.....	1	
District Administration Office, Khaotang.....	1	
District Administration Office, Udayapur.....	1	
District Administration Office, Saptari.....	1	
District Administration Office, Siraha.....	1	
District Administration Office, Dhanusha.....	1	
District Administration Office, Mahottari.....	1	
District Administration Office, Sarlahi.....	1	

District Administration Office, Sindhuli.....	1
District Administration Office, Ramechhap.....	1
District Administration Office, Dolakha.....	1
District Administration Office, Sindhupalchok	1
District Administration Office, Kabhrepalanchok	1
District Administration Office, Lalitpur	1
District Administration Office, Kathmandu	1
District Administration Office, Bhaktapur	1
District Administration Office, Nuwakot	1
District Administration Office, Rasuwa	1
District Administration Office, Dhading	1
District Administration Office, Makawanpur	1
District Administration Office, Rauthat	1
District Administration Office, Bara	1
District Administration Office, Parsa	1
District Administration Office, Chitawan	1
District Administration Office, Gorkha	1
District Administration Office, Lamjung	1
District Administration Office, Tanahun	1
District Administration Office, Syangja	1
District Administration Office, Kaski	1
District Administration Office, Manang	1
District Administration Office, Mustang	1
District Administration Office, Myagdi	1
District Administration Office, Parbat	1
District Administration Office, Baglung	1
District Administration Office, Gulmi	1
District Administration Office, Palpa	1
District Administration Office, Nawalparasi	1
District Administration Office, Rupandehi	1
District Administration Office, Kapilvastu	1
District Administration Office, Ardhakanchi	1
District Administration Office, Pyuthan	1
District Administration Office, Rolpa	1
District Administration Office, Rukum	1
District Administration Office, Dang	1
District Administration Office, Banke	1
District Administration Office, Bardia	1
District Administration Office, Surkhet	1
District Administration Office, Dailekh	1
District Administration Office, Jajarkot	1
District Administration Office, Dolpa	1
District Administration Office, Jumla	1
District Administration Office, Kalikot	1
District Administration Office, Mugu	1
District Administration Office, Salyan	1
District Administration Office, Humla	1

District Administration Office, Salyan	1
District Administration Office, Bajura	1
District Administration Office, Bajhang	1
District Administration Office, Achham	1
District Administration Office, Doti	1
District Administration Office, Kailali	1
District Administration Office, Kanchanpur	1
District Administration Office, Dadeldhura	1
District Administration Office, Baitadi	1
District Administration Office, Darchula	1

Among we, petitioners *Dalit* NGO Federation is the federation of the Non Governmental Organizations established with the objectives of uplifting the *Dalit* communities that compose of the one fourth of the total population of the country and that are socially oppressed, economically exploited, politically neglected and bringing these communities in the mainstream of the national development. For uplifting the *Dalits*, it has been providing, in addition to its other objectives, necessary legal assistance for the protection, promotion and restitution of fundamental and constitutional rights and human rights of the *Dalits*. It is the Federation of *Dalit* NGO Federation working for the elimination of all kinds of discrimination based on race.

Among the petitioners both of us advocates Bimal Bishwokarma and Luma Singh Bishwokarma and advocated Mamita Nepali, Rajan Sunar, Gomati Sunar and Bhoj Man Lamgade are legal practitioners. We are working for the establishment of society based on equality by providing legal aid to the helpless, neglected and oppressed classes to protect their rights and bringing into an end of the existing racial (cast) discrimination of untouchability, In Nepal, the discrimination of untouchability based on caste exists in practice even today. Almost a quarter of the total population of Nepal has been the victim of untouchability in society due to the mention of caste or on the ground of caste. *Dalit* communities have been compelled to live as a second class citizen on the ground of caste. It has been obvious that the discrimination of untouchability practiced in society from the tradition has been sustained because the people of those communities are compelled to write their occupational caste/race reflecting rationality. The *Dalit* communities have different surname (family name) similar to those of the peoples of other communities. Such different surnames (family names) have been revealed from the study conducted by the National *Dalit* Commission. The preamble of the Universal Declaration of Human Rights, 1948, accepting the human value and dignity as fundamental human rights, has guaranteed that all human beings are equal in

dignity and Rights. Likewise, Article 2 guarantees that no distinction shall be made on the basis of race, color or so on. Article 3 provides the right to life, liberty and the security of person. Article 7 of the declaration provides the right to equality, Article 15 (1) provides right to nationality and Article 22 guarantees the right to social security. Likewise, Article 1 of the International Covenant on Civil and Political Rights, 1966 guarantees the right to self-determination, Article 6 guarantees the inherent right to life and Article 9 guarantees the right to liberty and security of person. Likewise, Article 1 of the International Covenant on Economic, Social and Cultural Rights guarantees the right of self-determination and Article 9 provides the right to social security and social insurance. Article 2 (1) of the International Convention on the Elimination of All Forms of racial Discrimination (ICERD) imposes the obligation on the state parties to condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms. Article 2 (1) (d) imposes obligation to prohibit and bring to an end racial discrimination by all appropriate means, including legislation as required. Article 2(2) imposes obligation to take special and concrete measures to guarantee the full and equal enjoyment of human rights and Article 3 provides obligation to condemn racial segregation. Article 5 also imposes an obligation to eliminate all forms of Discrimination. Since Nepal is also a state party of the above-mentioned Conventions, it is the obligation of the respondents and the whole country Nepal to guarantee them pursuant to the Section 9 of the Treaty Act, 1991. Likewise, the preamble of the Constitution of the Kingdom of Nepal emphasizes on the guarantee of human rights and equality and political, economic and social justice. The Article 8 and 9 of the Constitution provide about citizenship. Article 11 (1), (2) and (3) of the constitution provide right to equality whereas Article 11(4) guarantees that no person shall, on the basis of caste, be discriminated against as untouchable. Article 12 provides fundamental right of personal liberty and Article 12 (2) (e) provides the freedom to practice

any profession, or to carry out any occupation, industry or trade. Article 25 (1) of the Constitution has formulated the Directive Principle of the State with an objective to establish a just system in all aspects of national life including social, economic and political life protecting the lives, property and liberty of the people. Likewise, Article 25 (3) sets forth the principle to establish harmony amongst the various casts, tribes, religions, languages, races and communities by eliminating all types of economic and social inequalities. The number 10 (A) of the Chapter on Decency of *Muluki Ain* prescribes punishment for practicing discrimination as untouchable on the ground of caste. Section 3 and 4 of the Civil Rights Act, 2012 (1955) provides right to equality, Section 4 (b), (c), (f) of Social Welfare Act, 2049 (1992) provides the right to lead the life with dignity. Section 3 of the Citizenship Act, 2020 (1963), Rule 3 of Citizenship Rules 2049 (1992) and Schedule 1 and 2 of the same Rule provide about proving citizenship certificate.

Violating the above-mentioned international treaties, conventions, rights guaranteed by the Constitution of the Kingdom of Nepal and Nepal law and disregarding the obligations prescribed and directive principles set forth by the constitution, the respondents have been issuing citizenship certificate to the people of *Dalit* Communities by compulsorily mentioning the so-called occupational caste when they ask for providing citizenship certificate mentioning the surname (family name). His Majesty's Government, Council of Ministers, has decided on 2052/4/4 (July 20, 1995) to provide citizenship certificate based on surname (family name) and has issued circular accordingly, however, the respondents have disregarded it and have not implemented it. In Section 3 of Citizenship Act, 2020 (1963) and Rule 3 of Citizenship Rules 2049 (1992) and Schedule 1 and 2 of the same Rule there is provision to mention name and surname (family name) while providing citizenship certificate. However, the respondents, while providing citizenship certificate, have arbitrarily compelled the people of *Dalit* community to mention caste/ race disregarding the law mentioned above, have sustained the condition of being victimized of discrimination based on race (caste), and have not let them to live a life with dignity. Therefore, it is urged to issue the writ of mandamus and other appropriate order in the name of respondents His Majesty's Government, Ministry of Home and District Administration Offices to issue citizenship certificate based on surname (family name). It is also urged to issue an order to the Ministry of Home Affairs and District Administration Offices to make correction in citizenship certificate when application is filed urging for correcting the

citizenship certificate mentioning the surname (family name) and also provide certificate stating that the previous citizenship certificate mentioning the caste and the present citizenship certificate that mentions surname (family name) is same and the person mentioned in the documents prepared as per the previous citizenship certificate is the same. It is also urged to issue order to other concerned bodies to correct the documents requiring correction as per the correction made in the citizenship certificate based on surname (family name). It is urged to issue an order to the Ministry of Local Development and local bodies under it to provide recommendation for citizenship certificate and concerned officials to provide recommendation based on surname (family name) if application is filed for it. It is also urged to issue Mandamus and other necessary order in the name of His Majesty's Government, Ministry of Law, Justice and Parliamentary Affairs and the Parliament to formulate necessary law for providing citizenship certificate on the basis of surname (family name). It is stated in the writ petition.

(4) Show cause order of this court dated 2061/5/11 B.S. (August 27, 2004) reads as: "What has happened in this case? Why the order, as requested, should not be issued? Let the respondents be notified enclosing with a copy of writ petition to submit the written reply/response, within 15 days excluding the days of journey, through the Office of the Attorney General. Let the writ petition be presented before the bench after the submission of the written reply or expiry of the period."

The District Administration Office Nuwakot in its written reply has stated that the rights of the petitioners provided by the No. 10 (a) of the Chapter on Decency of the *Muluki Ain*, Civil Rights Act, 1955, Social Welfare Act, 2049 (1993), Citizenship Act, 2020 (1963) and the decision of His Majesty's Government 2052/4/4 (July 20, 1995) (July 20, 1995) has not been restricted. The petitioners also have not been able to write definitely that the office has violated their rights. Therefore, the writ petition deserves to be quashed and should be quashed.

The District Administration Office Sindhuli in its written reply has stated that Citizenship Certificates have been provided to the *Dalit* communities according to the rights guaranteed by the Constitution of the Kingdom of Nepal and law, the obligation imposed thereon, and the directive principles and according to the decision of His Majesty's Government, Citizenship Act and Citizenship Rules. Therefore, the writ petition filed making respondent to the office should be quashed.

District Administration Office Dhanusha in its written reply has stated that the petitioners have not been able to mention from what acts of the office

have violated the fundamental rights of equality guaranteed by the Article 11 and right to liberty guaranteed by the Article 12 of the Constitution and submit evidences. As regard to the plea of the respondent made in the paragraph 10 of the writ petition, citizenship certificates have been provided according to the provision of Section 3 of the Citizenship Act, 2020 (1963) and Rule 3 and Schedule 1 and 2 of the Citizenship Rules. No compulsion has been made to mention caste in arbitrary manner disregarding the provisions of the above mentioned Acts and Rules. The office has not carried out any act violating the right to equality and right to liberty of the petitioners guaranteed by the constitution. Therefore, the writ petition should be quashed.

Ministry of Home Affairs in its written reply has stated that the petitioners have not been able to mention concretely and objectively (factually) that their fundamental rights or legal rights without effective remedies have been violated from the act of the Ministry or its subordinate offices and filed writ petition urging for issuance of mandamus based on fictitious matters. The writ petition is unjustifiable and should be quashed.

District Administration Office Ramechhap in its written reply has stated that the the office has been distributing citizenship certificates based on surname (family name) as per the application filed by the applicant and pursuant to the circular issued by the Ministry of Home Affairs dated 2052/4/21 July 20, 1995) (August 6, 1995) of the Fiscal Year 1(a) 2052/2053 Ref. No. 171, provision of Chapter 6 Section 6 (a) of Citizenship Distribution Directives, 2061 and Section 5 of the decision of the Council of Ministers dated 2052/4/4 (July 20, 1995). Dhan Bahadur Damai, son of Suryaman Damai, and resident of Gauswara V. D. C. ward No. 2 of this district filed an application urging for providing the copy of citizenship certificate changing his surname (family name) into Mahat from his caste/race Damai spelled in his old citizenship certificate and he has been provided the citizenship certificate spelling his surname (family name) as Mahat. Copies of the both; of his old withdrawn citizenship certificate and presently provided citizenship certificate bearing the number 223 that mentions the surname (family name) Mahat have been enclosed herewith as proof. Therefore, the writ petition deserves to be quashed concerning that office and should be quashed.

District Administration Office Gorkha in its written reply has stated that Nepali citizenship certificate has been provided to the person mentioning the surname (family name) as per demanded by the person made by him/her by filling up the form prescribed in the Schedule. No compulsion has

been made to mention the caste/race arbitrarily as mentioned in the writ petition.

District Administration Office Kanchanpur in its written reply has stated that the communities with different surname (family name)s are provided Nepali citizenship certificate allowing them to mention the surname (family name)s or so called occupational caste as per their choice. No one has been prevented from doing this.

Ministry of Local Development in its written reply has stated that local bodies under the that Ministry awhile making recommendations for citizenship certificate have been making recommendations as per the proofs presented by the applicants. There is practice of filling up the forms to mention the surname (family name) in the citizenship certificate according to the surname (family name) of applicant's father. The Village Development Committees, Municipalities and District Development Committees provide recommendation letter based on the forms and documents enclosed in it. Citizenship certificate are not issued from the local bodies and therefore they do not have authority to correct these certificates. Therefore, on order should be issued against the Ministry and writ petition should be quashed.

District Administration Office Parsa in its written reply has stated that the office is ready to issue citizenship certificate to citizens of *Dalit* communities or correct their certificate based on their surname (family name)s within the limit of the decision of the Council of Ministers if they apply for it. Therefore, the writ petition should be quashed.

District Administration Office Chitwan in its written reply has stated that the office has the practice of issuing Nepali citizenship certificate even in the condition of mentioning a surname (family name) different from one's father, based on the Constitution of the Kingdom of Nepal, 1990, the Citizenship Act, 2020 (1963), Citizenship Rules, 1993, Rules Regarding to the Correction of Name and Caste (Race), 1961, the Directives issued from His Majesty's Government from time to time and the provision of No. 5 of the Circular issued by the Ministry of Home dated 2052/4/21 July 20, 1995) (August 6, 1995) based on the decision of His Majesty's Government dated 2052/4/4, regarding to the correction of surname (family name) and maintaining surname (family name)s. Discrimination has not been made and have not been compelled to mention caste (race) compulsorily as pleaded in the writ petition. The fundamental right liberty of the petitioners has not been violated by any means from the office and the order should not be issued. The writ petition deserves to be quashed and should be quashed.

District Administration Office Kathmandu in its written reply has stated that the petitioners have not been able to claim clearly that which person of which community has been deprived at what time of providing what types of documents. The law has not also made mandatory provision for obtaining the documents including citizenship certificate based on caste. The writ has been filed based only on probability and therefore, should be quashed.

District Administration Office Morang in its written reply has stated that no act has been committed from that office as stated in the writ petition and all the citizens have been treated with respect and the order of Mandamus should not be issued. The writ petition should be quashed.

District Administration Office Manang in its written reply has stated that no any act on the subjects mentioned in paragraphs No. 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 Articles 11, 12, 23 and 88 (2) of the Constitution of the Kingdom of Nepal has been committed from the office. The writ petition filed mentioning the false and untrue description. Therefore, the writ of mandamus should not be issued and the writ petition should be quashed.

District Administration Office Dailekh in its written reply has contended that it has been obvious form that fact that the citizens of *Dalit* communities have obtained the citizenship certificate mentioning the surname (family name). The president Dil Bahadur Bishwokarma of the donor agency advocating for the same community, and others making false and fictitious blame against the office being indifferent toward the enforcement of the decision of the His Majesty's Government filed this writ petition. They have stated that the respondents while providing citizenship certificate, arbitrarily compelled to mention caste/race disregarding the provisions of Citizenship Act, 2020 (1963) and the Citizenship Rules 2049 (1993) have sustained the condition of being victimized of discrimination based on race (caste) and have not let to live a life with dignity. The writ petition is baseless and worthy to be quashed. Therefore, the writ petition should be quashed.

District Administration Office Mustang in its written reply has stated that the office has been carrying out its work keeping all equally in view and no act of social suppression; economic exploitation, political exclusion and exploitation of labor have been committed from the office. The writ petition filed by the petitioners is unjust, based on prejudice and therefore, should be quashed.

District Administration Office Bhojpur in its written reply has contended that no discrimination has been made against Federation of Non Governmental Organization and equal treatment have been made to all by treating them respectfully and therefore, the

writ should not be issued. The writ petition should be quashed.

District Administration Office Bardiya in its written reply has stated that the office has been providing citizenship certificate without any discrimination on the ground of race, religion, gender, and place of origin and in simple and easy manner to all Nepalese citizens who have filled up application for obtaining citizenship certificate upon examining the application whether it is duly filled up or not. The citizenship certificate are issued pursuant to the provision of law in force, directives and circulars, on the ground of basic evidences establishing the name, caste, surname (family name), address and the evidence of descent. None is deprived of the access to public places to use openly. The office has not made any discrimination on the ground of caste, race, discrimination of untouchability has not been practiced, and no one has been compelled to mention race and surname (family name). Therefore, the writ petition should be quashed.

District Administration Office Humla in its written reply has stated that the office has been providing citizenship certificate mentioning the name and surname (family name) based on the particulars including name, surname (family name) mentioned in the application form, the recommendation and the evidence corroborating these particulars. Such applicants have not been compelled to mention occupational caste. No *Dalit* has come to file an application, until date, to obtain citizenship certificate claiming the surname (family name) similar to that of another communities as mentioned in the paragraphs 3, 4 and 10 of the writ petition. No information has been received in this office regarding the problems being created against the *Dalits* to cause them suppressed and disturbed on the grounds of caste or race. The social harmony has been sustained according to the Constitution of the Kingdom of Nepal with due regard to the existing social and cultural practices and no complaint has been made by any individuals or organizations for the settlement of disputes arisen on these grounds in the administrative bodies. Therefore, no act or wrongs, as mentioned in the petition, has been committed from this office and the false writ petition should be quashed.

District Administration Office Rupandehi in its written reply has stated that the office has issued and distributed the citizenship certificate to the persons who are eligible to acquire the citizenship by descent according to the Constitution, Citizenship Act, Rules and directions received from the superior offices. The *Dalit* communities with various surnames (family names), who have filled up forms duly according to Act, Rules and circulars have not been deprived to write their surname (family name) and

have not been compelled to write their so-called occupational casts. Likewise, the office has not disregarded the circular issued as per the decision of His Majesty's Government dated 2052/4/4 (July 20, 1995) and has not let it to be ineffective/unenforced. Therefore, the rights of the petitioners provided by the Article 11, 12(1) of Constitution of the Kingdom of Nepal and other laws have not been violated and the obligations imposed by them have not been defied/disregarded. Therefore, the statement of the writ petition is fictitious and untrue and the writ petition should be quashed.

District Administration Office Sindhupalchok in its written reply has stated that citizenship certificate has been issued to the people of *Dalit* communities mentioning the surname (family name) as requested by them and the surname (family name) have also been corrected in the previously issued citizenship certificates if someone files an application requesting for it. Likewise, apart from the subject of maintaining surname (family name) mentioned in the writ petition, the office has not made discrimination against the *Dalits* and they have not been deprived to do any act. Therefore, the writ petition filed against the office should be quashed.

District Administration Office Salyan in its written reply has stated that the subject matter of the writ petition is outside the jurisdiction of that office and the writ petition filed making opponent to the office is unjust in that part and therefore should be quashed.

District Administration Office Bhaktapur in its written reply has stated that the office has not done any act mentioned in the writ petition. It is also stated that the citizenship certificates have been provided as per the provisions of Nepal Citizenship Act, 2020 (1963) and Nepal Citizenship Rules, 2049(1993) and that the office has not issued citizenship certificate arbitrarily disregarding the provisions of law until this date and the writ petition is fictitious and wholly false and therefore, should be quashed.

The Office the Prime Minister and Council of Ministers in its written reply has stated that the petitioners have not been able to mention clearly about which of their rights have been violated from which act of that office. The writ petition filed making the office respondent without any ground deserves to be quashed and therefore should be quashed.

District Administration Office Jumla in its written reply has stated that the citizenship certificates have been issued to Nepali citizens pursuant to the provisions of the Constitution of the Kingdom of

Nepal, Citizenship Act and Nepal Citizenship Rules and the directions of His Majesty's Government, Ministry of Home from time to time regarding to providing citizenship certificate to Nepalese citizens. It is also requested that the complete answer regarding to this shall be received from the Ministry of Home Affairs.

District Administration Office Kabhrepalanchok in its written reply has stated that the office has not made discrimination on the grounds of race/cast while performing the acts to be carried out by this office. The *Dalit* communities have not been treated as second-class citizens on the ground of race/cast. The practice of treating as untouchable has been discouraged. The office has been providing service to the people by maintaining tribal surname (family name) rather than maintaining occupational caste to those who have come to do so. In the documents including citizenship, the surname (family name) established from the evidences submitted has been maintained. The office has not compelled anyone to write the occupational caste and the decision of His Majesty's Government has been fully complied with. No any act has been done to degrade the *Dalits* or violate their human rights. Therefore, the writ petition should be quashed.

District Administration Office Parbat in its written reply has stated that the office has performed its functions fully complying with the law. The office has not got any information about the acts mentioned in the writ petition and the writ petition filed against the office should be quashed.

District Administration Office Solukhumbhu in its written reply has stated that the office has not received any information about the existence of the problems mentioned in the paragraph 4 of the writ petition. The office has not made any discrimination but treated all people equally. Likewise, the office has been carried out its functions according to the Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights 1966, Constitution of the Kingdom of Nepal, 2047 (1990) *Muluki Ain*, 2020 (1963), Citizenship Act, 2020 (1963) and other laws in force. No discrimination has been made against the people of *Dalit* and backward communities on social, political and economic grounds. Therefore, the writ petition should be quashed.

District Administration Office Kailali, Dhangadhi, in its written reply has stated that there is no question of creating problems from this office relating to problems raised by the petitioners in the writ petition. The office has been helping people for getting the facilities provided by the state. The office has not deprived them from the remedies falling

under the jurisdiction of the office including the legal remedies. Therefore, the writ petition should be quashed.

The Ministry of Law and Justice in its written reply has stated that the writ petition is silent about which of the right of the petitioners has been violated by which of the act of this Ministry, and the Ministry has not done any act affecting the rights of the petitioners. There is the provision in the Section 3 of Nepal Citizenship Act, 2020(1963) Rule 3 and Schedule 2 of Nepal Citizenship Rules, 2049 (1993) that names and surname (family name)s have to be mentioned while issuing citizenship certificates. In addition, such provisions have not violated the rights of the petitioners provided by the Constitution and law. Therefore, the writ petition should be quashed.

District Administration Office Rautahat in its written reply has stated that the office has been issuing citizenship certificate mentioning the name and surname (family name) if anyone comes to obtain the citizenship certificate by mentioning the same. It has performing the functions as per the policy and direction of His Majesty's Government from time to time. No one has been compelled to write any caste or race. No discrimination has been made on the ground of race/cast. Further, no constitutional or legal right of the petitioners have been violated and the writ petition should therefore, be quashed.

District Administration Office Siraha in its written reply has stated that on the matters mentioned in the paragraph 12 (a), (b) and (c), the office has not done any act otherwise, except according to the law. Therefore, the writ petition should be quashed.

District Administration Office Ilam in its written reply has stated that citizenship certificate has been provided in convenient way to the persons who have come fulfilling the procedure of the law based on the citizenship certificate of the father and grandfather of the applicants and the documents submitted by them with the application. If the application has been filed within the limitation, to correct any description mentioned also in the citizenship certificate already obtained, the particulars have been corrected in cases the particulars seems to be justified from the evidences submitted. In such situation, the plea of the petitioners that there has been discrimination while distributing citizenship certificate and disregard of the prevailing law is untrue and therefore, the writ petition should be quashed.

District Administration Office Okhaldhunga in its written reply has stated that the office is committed to implement the provision of equality provided by

the Constitution of the Kingdom of Nepal, Nepal Civil Rights Act, 2012 (1959), and the matters mentioned in different conventions as cited by the petitioners in their writ petition. The office has not done any discrimination as stated in the petition. Therefore, the writ petition deserves to be quashed and should be quashed.

District Administration Office Myagdi in its written reply has stated that the office while issuing citizenship certificate has not made any discrimination violating the provision of the right to equality provided by the Article 11 and the fundamental right guaranteed by the Article 12 of the Constitution of the Kingdom of Nepal, 1990 and any other legal right. No discrimination has been made on the grounds of race, religion, class, gender, and alike. Therefore, the writ petition should be quashed.

District Administration Office Syangja in its written reply has stated that the office, while delivering any service to the citizens, has provided without making any discrimination on the ground of being *Dalit* or race, but according to the provision of constitution and law. No fundamental rights of the petitioners have been infringed from the function of the office and the writ petition should be quashed.

District Administration Office Makwanpur in its written reply has stated that the petitioners have not been able to establish factually about how the office has made discrimination on the grounds of untochability or on the ground of race and done unconstitutional and so called illegal act. Since the office has not done any unconstitutional and illegal act mentioned in the writ petition and the plea of the petitioners is untrue in prima facie. Therefore, the writ petition should be quashed.

District Administration Office, Kaski in its written reply has stated that any arbitrary and illegal act as stated in the writ petition has not been performed by the office and the writ petition should be quashed.

District Administration Office, Jhapa in its written reply has stated that the office has not performed any act harming the *Dalit* community, deprived them of the right to live with dignity and respectful life and has not acted against different conventions, treaties and Constitution of the Kingdom of Nepal 2047 (1990). The office has not performed any act to deprive them from enjoying economic, social and cultural rights and compelled them to mention occupational caste while distributing citizenship certificate. Instead, citizenship certificates have been provided as per the particulars mentioned in recommendation according to the schedule and the documents enclosed with the application

establishing the descendant. Further, all the facilities and services have been provided on the basis of equality without any discrimination. Therefore, the order should not be issued and the writ petition should be quashed.

District Administration Office Dang in its written reply has stated that the *Dalit* communities have not been deprived from carrying out occupation or business that are carried out by other communities. The functions and proceedings to be carried out by the office have been performed as per the law in force. No discrimination has been made while performing any act on the ground that it belongs to the *Dalit*. *Dalit* communities and other Nepali citizens have been provided citizenship certificate without any discrimination when they come to file application for obtain Nepal citizenship based on the surname (family name) mentioned in the citizenship certificate obtained by their father, mother and brothers, after filling up the form as per the schedule. Therefore, there exists no condition to issue writ and the writ petition should be quashed.

District Administration Office Sankhuvasabha in its written reply has stated that the matters mentioned in the writ petition from paragraph 1 to 9 are not related to District Administration Office. In the paragraph 10 of the writ petition, it is blamed that while the people of *Dalit* communities come to obtain citizenship certificate it is provided only by mentioning the so called occupational caste. It has also been blamed that while applying for citizenship certificate has been provided by compulsorily mentioning occupational caste/race. In this regard, citizenship certificates have been provided as per the request of the applicants based on the proofs presented with the application. In case a person, who has already obtained the citizenship certificate applies for making correction of surname (family name) pursuant to the Section 6 (b) of the Chapter 6 of the Citizenship Distribution Directives, 2061 issued from the Ministry of Home Affairs, such surname (family name) is corrected causing them to present substantial proofs showing the surname (family name). The blame made upon the office is untrue and baseless. Therefore, the writ petition should be quashed.

District Administration Office Bajhang in its written reply has stated that the blame that the office has compelled the people of *Dalit* communities to spell occupational caste/race while obtaining citizenship certificate is false. The office has neither deprived the people of *Dalit* communities from the rights guaranteed by the Constitution of the Kingdom of Nepal and nor these rights have been violated. The office has been performing the acts respecting the human dignity. No discrimination has been made

on the ground of race and untouchability, the office is treating equally to all, and therefore, the writ petition should be quashed.

District Administration Office Surkhet in its written reply has stated that no arbitrary act has been done and no discrimination and unequal treatment has been made on the ground of race against any community in the process of enforcing the policy of His Majesty's Government. Citizenship certificate has been provided immediately and other services has been delivered in easy manner to the people of every caste and community if sufficient proof as required by the law has been submitted. Every act performed by the office has been carried out according the law and the writ petition should be quashed.

District Administration Office Bara in its written reply has stated that the office has been carrying out its act according to the prevailing Constituting, Act, Rules and Circulars. The office has not inflicted any type of harm to the people of *Dalit* Communities to live their life with dignity. Therefore, the writ petition should be quashed.

District Administration Office Baglung, in its written reply, has stated that upon receiving the application for obtaining citizenship certificates by correcting the surname (family name), the certificate has been issued as per the letter of Ministry of Home Ref. No. 281 dated 2056/11/17 addressing to the Nepal *Dalit* Organization, Central Office Teku, and the letter of the same Ministry Ref. No. 91 dated 2061/5/31 addressed to the National *Dalit* Commission, Thapathali relating to the notification. Therefore, the writ petition should be quashed.

District Administration office Udayapur in its written response has stated that citizenship certificates have been distributed in the district according to the decision of the His Majesty's Government dated 2052/4/4 (July 20, 1995) distributing the citizenship certificate on the basis of surname (family name). Therefore, the writ petition is untrue and should be quashed.

District Administration Office Taplegung in its written reply has stated that citizenship certificate has been issued from the office not on the ground of caste/race. It is issued on the basis of surname (family name) pursuant to the Constitution of the Kingdom of Nepal, 2047 (1990), Citizenship Act, 2020 (1963), the Citizenship Rules, 2049 (1994) and the decision and order of His Majesty's Government, Council of Ministers made from time to time. The citizenship certificate has been issued from the office according to the circular issued from the Ministry of Home dated 2052/4/21 (August 6, 1995), based on the decision of His Majesty's Government dated

2052/4/4 (July 20, 1995). No Nepali citizen has been discriminated on the ground of race. Citizenship certificate has been issued within its jurisdiction on the basis of surname (family name) according to the procedure prescribed by the Constitution, Act and laws and the surname (family name) has also been corrected accordingly. Therefore, the office has not committed any act violating any title and rights of the petitioners and therefore, the writ petition should be quashed.

District Administration Office Panchthar in its written reply has stated that the office implemented the provisions mentioned in the writ petition and the provisions prescribed by the law according to law. The office has been carrying out its works promptly and the pleadings made in the petition are unjust, and therefore, the writ petition should be quashed.

District Administration Office Arghakhanchi in its written reply has stated that like other district administration offices, this office has been distributing citizenship certificate according to the Constitution, Citizenship Act and Rules and all legal provisions concerning to citizenship after making necessary inquiry upon the form duly filled up. No discrimination has been made on the ground of race, tribe or clan. No right of the petitioners has been violated as mentioned in the petition and the writ petition should be quashed.

District Administration Office Banke in its written reply has stated that *Dalit* communities have been allowed to write their surname (family name). Surname (family name) and races/cast have been corrected without delay to *Dalit* or any other Nepali citizen, if it is worthy to be corrected, after making necessary inquiry if he/she files an application enclosing necessary evidences stating that there is mistake in his/her surname (family name) according to law. None has been compelled to write caste/race and therefore, the writ petition concerning this office is unjustifiable and therefore, should be quashed.

District Administration Office Rasuwa in its written reply has stated that no constitutional or legal rights of the petitioners have been violated from any act of this office. The writ petition filed on fictitious and subjective grounds is worthy to be quashed in itself and should be quashed.

District Administration Office Bajura in its written reply has stated that in the writ petition filed against this office the petitioners have not been able to clearly mention which of the act to be carried out by this office according to Citizenship Act or Rules or other law in force on the matters mentioned in the petition. Therefore, law does not support the

petition of the petitioners and therefore, the petition deserves to be quashed and should be quashed.

District Administration Office Mahottari in its written reply has stated that if any citizen applies for citizenship certificate mentioning the name different from his/her father, the certificate is provided by mentioning different surname (family name) or correcting the surname (family name) if the statement seems to be reasonable. Therefore, the order as requested by the petitioners should not be issued against the office and the writ petition should be quashed.

District Administration Office Dhankuta in its written reply has stated that citizenship certificate has been distributed from the office within the purview of Citizenship Act, 2020 (1963) and the Citizenship Rules 2049 (1992). While distributing citizenship certificate pursuant to Schedule 2 of the Citizenship Rules 2049 (1992), name and surname (family name) of the citizen should be mentioned, however there is no mandatory provision for mentioning caste/race. Therefore, citizenship certificate is issued by mentioning name and surname (family name) as requested by the applicant in the schedule. None is required by the to mention caste/race in citizenship certificate. If anyone files an application with the recommendation of Village Development Committee or Municipality stating that there is error in the name or surname (family name), it is also certified that such and such person is the same. Therefore, the plea of the petitioners concerning this office is unreasonable and the writ petition should be quashed.

District Administration Office Saptari in its written reply has stated that while distributing citizenship certificate from that office it is issued according to Act, Rules and the circulars issued by the Ministry of Home under these act and rules. On those matters, the office has been carrying out its function as per the circular received from the Ministry of Home with direction to carry out function as per the decision of Council of Ministers in different from time to time. If anyone asks for obtaining citizenship certificate based on surname (family name) except race/caste or based on caste the same is provided as per his/her demand if such person seems eligible for citizenship by descent. None has been discriminated. Therefore, the false writ petition should be quashed.

District Administration Office Rolpa in its written reply has stated that the plea of the petitioner that citizenship certificate has been distributed from the office by compulsorily mentioning the so called occupational caste/race, is fictitious and untrue. The order of mandamus should not be issued in the petition based on untrue facts. Therefore, the writ petition should be quashed.

District Administration Office Dadeldhura in its written reply has stated that in the Section 3 of the Citizenship Act, 2020(1963), Rule 3 and Schedules 1 and 2 of the Citizenship Rules, 2049 (1992), there is provision of mentioning name and surname (family name) while issuing citizenship certificate. Regarding to the plea that compulsion has been made arbitrarily to mention caste/race disregarding the legal provisions, the office has been distributing citizenship certificate in prompt and easy manner under the limitation of Citizenship Act, 2020 (1963), Citizenship Rules, 2049 (1992) and the Directives issued from the Ministry of Home Affairs. The statement of the petitioners is false and therefore, the petition should be quashed.

In this writ petition, scheduled in the daily cause list and presented before the bench for delivering judgment, the learned advocates Gomati Sunar, Bhoj Man Lamgade, Rajan Sunar, Bimal Bishwokarma, Arjun Kumar Bagale, Shyam Kumar Bishwokarma, on behalf of the petitioners argued that the respondents have been providing citizenship certificate to the people of *Dalit* Communities compulsorily mentioning the so called professional caste which is in violation of the international treaties, conventions, rights guaranteed by the Constitution of the Kingdom of Nepal and the decision of His Majesty's Government dated 2052/4/4 (July 20, 1995) to provide citizenship certificate on the basis of surname (family name). Because of such act, there is no condition for the people of *Dalit* communities to live a dignified and respectful life in society. Therefore, to create the condition for the people of *Dalit* community to live a dignified and respectable life, it is requested to issue the writ/order of Mandamus in the name of respondents to issue citizenship certificate based on surname (family name) and also make correction in the citizenship certificate based on surname (family name). On behalf of the respondents, Joint Government Attorney Saroj Prasad Gautam has stated that the citizenship certificates have been issued/distributed not on the basis of caste/race as contended by the petitioner. Citizenship certificate has been provided on the basis of surname (family name). His Majesty's Government, Council of Ministers has also decided and issued circulars to the concerned bodies to issue citizenship certificate based on surname (family name). Therefore, there is no any relevancy of the writ petition and it should be quashed. Pursuing the above-mentioned arguments the court has to decide whether or not the writ should be issued as per the petition of the petitioners.

To consider about the decision the petitioners have urged for issuing the writ of mandamus in the name of respondents stating that respondents have

been issuing citizenship certificate to the people of *Dalit* Communities by compulsorily mentioning the so called occupational caste/race violating the international treaties, conventions, rights guaranteed by the Constitution of the Kingdom of Nepal and the decision of His Majesty's Government dated 2052/4/4 (July 20, 1995) to distribute citizenship certificate based on surname (family name). Because of such act, there is no situation for the people of *Dalit* communities to live a dignified and respectful life in society. Therefore, to create the situation for the people of *Dalit* community to live a dignified and respectable life, the petitioners have urged for issuing an order of Mandamus in the name of respondents to issue citizenship certificate based on surname (family name) and make correction in the citizenship certificate based on surname (family name). The respondents, in their written replies, have stated that the citizenship certificates have been issued according to the Constitution of the Kingdom of Nepal, 2047 (1990), Citizenship Act, 2020(1963), the Citizenship Rules, 2049 (1994), Rules Regarding to the Correction of Name and Race/Caste, 2017 (1960), direction made by His Majesty's Government from time to time and the decision of His Majesty's Government, Council of Ministers dated 2052/ 4/4 (July 20, 1995). No discriminatory act has been committed as stated in the petition by the petitioners, like discriminating or issuing citizenship certificate causing them to write race/caste compulsorily. Therefore, the writ should not be issued. The writ petition should be quashed.

Going through the writ petition, the petitioners have requested for issuance of order of mandamus to issue citizenship certificate on the ground of surname (family name) and make correction accordingly. In Section 3 (A) of Citizenship Act, 2020 (1964) it is stated that "A person who desires to obtain Nepalese citizenship certificate under Article 8 or Clauses (1), (2) or (3) of Article 9 of the Constitution may make an application to such authority and in such format as may be prescribed; and the prescribed authority shall grant the certificate in the prescribed format to that person if the applicant is found to be eligible to obtain the citizenship certificate, after holding an inquiry into the matter as prescribed." Likewise, in the Rule 3 (1) of the Citizenship Rules 2049 it is stated that if a citizen of Nepal intends to obtain the certificate of citizenship of Nepal, such a citizen shall have to make an application, accompanied by the recommendation of the Chairman of the concerned District Development Committee, President or Vice President of Village Development Committee or Gazetted Officer of His Majesty's Government or Officers of Royal Service, to the concerned Chief District Officer, in the format referred to in Schedule-1. Likewise, in Rule 3(3)

of the same Rules it is stated that “ Chief District Officer, after receiving the application pursuant to Sub-rule (1), shall make necessary inquiry, and if the applicant is found to be eligible to obtain the certificate of citizenship of Nepal, may issue the certificate of citizenship of Nepal to him or her in the format pursuant to Schedule 2. In the format of the application, pursuant to Schedule 1, to be filed for obtaining Nepali Citizenship Certificate or the format of Citizenship Certificate pursuant to Schedule 2, there is no mention of caste/race as contended by the petitioners. The formats of application to be filed for obtaining Nepali Citizenship Certificate and format of citizenship certificate have been provided by mentioning the Name and Surname (family name) of the applicant, his/her father and Husband etc. The written reply have been submitted from the respondents stating that citizenship certificates have been distributed according to the said provisions. Likewise, going through the decision of His Majesty’s Government dated 2052/4/4 (July 20, 1995)/ (July 10,1995) it has been decided to issue citizenship certificate mentioning surname (family name) and make correction on the citizenship certificate based on surname (family name) and circular has also been issued accordingly.

Although there is clear provision in the law to issue citizenship certificate based on surname (family name) and circular has also been issued accordingly, it has been obvious from the example presented by the petitioners that sometimes citizenship certificates have also been issued mentioning caste/race. Going through the Article 11 (1) of the Constitution of the Kingdom of Nepal, 1990, there is constitutional provision that-(1) all citizens shall be equal before the law, and no person shall be denied the equal protection of the laws. Likewise, in Article 11(3) it is provided that the State shall not make discrimination against citizens among citizens on grounds of religion, race, caste, tribe, sex, origin,

language or ideological conviction or any of these. Thus, in the condition that the constitution and laws have guaranteed the right to equal protection to all caste and tribes, to mention caste/race in the place of surname (family name) or after surname (family name) while providing citizenship certificate to *Dalits* without any reason and objectives, is against the objective and spirit of the law.

Therefore, an order of Mandamus is hereby issued in the name of respondent bodies, to make or cause to make provision for issuing citizenship certificate or making correction thereon or providing recommendation for obtaining thereto, based on surname (family name), to the people of *Dalit* communities, like other citizens, while issuing citizenship certificate, making correction thereon or recommending thereto; and make or cause to make correction in the citizenship certificate mentioning the surname (family name) pursuant to law.

In order to notify the respondents, let the copy of the order be sent to the Office of the Attorney General and let the case file be handed over to archive section after deducting the record of the case from the case registration book.

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Justice

I concur with the above-mentioned decision.

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Justice

Bench Officer : Bishnu Prasad Aryal

Computer : Rukmani Shrestha

Done on Monday the 1st day of the Month of Jestha of the Year 2063 (May 15, 2006)



Supreme Court, Division Bench**Honorable justice Anup Raj Sharma****Honorable Justice Kalyan Shresthar Karki****Writ No of the year 2063-WS-0089****Date of Issuance of Order: 2065/01/04****Subject: Certiorari**

Nakkali Maharjan, resident of Kirtipur Municipality, Ward No 6, Kathmandu et al.1 Petitioner
Vs.

Office of the Prime Minister and Council of Ministers et al.1 Respondent

As a state party to the international conventions it is the duty of the state to discharge the obligation according to these Conventions. (*Paragraph No. 8*)

The act of denying the petitioner to make recommendation causing to deprive her from obtaining citizenship certificate based on gender or marital status cannot be held legal. (*Paragraph 9*)

On behalf of the Petitioner: Learned Advocates Ms. Sapana Pradhan Malla, Ms. Meera Dhungana, Mr. Ratna Kaji Shrestha, and Mr. Sabin Shrestha

On behalf of the respondent: Learned Deputy Government Attorney Mr. Brajesh Pyakurel, Sujandra Maharjan

Precedent adhered:

Related Laws: Article 11, 9(1) of the Constitution of the Kingdom of Nepal, Section 3 of the Citizenship Act, 2020 (1963), Article 13(1)(2), 107, 8(2) of the Interim Constitution of Nepal, 2007, Section 3(1) of Nepal Citizenship Act, 2063(2007) and Section 9(1) Nepal Treaty Act, 2047 (1990)

Order**Justice Anup Raj Sharma:**

The short description of the fact of the writ petition filed to this court pursuant to Articles 23 and 88 of the Constitution of the Kingdom of Nepal, 1990 and the order thereof is as follows:

We petitioners are the members of Forum for Women, Law and Development, an organization having concern with human rights and established

for the purpose of defending women's human rights for the protection of the legal rights of women. I, petitioner Nakkali Maharjan, am a person suffered from deprivation of right to obtain citizenship like that of men. I was born before 29 years as youngest daughter of Dev Maharjan and Nanda Maya Maharjan resident of Kirtipur Municipality ward No 6 of Kathmandu district. I married to Gopal Lama in 2050 B. S. (1993). A son Amir Lama has born from my conjugal relationship with my husband Gopal Lama. I do not know where my husband Gopal Lama has gone for years leaving me and my son alone. After my husband left us I along with my son have been living in the protection of my parents.

Citizenship certificate is necessary for getting employment and also for opening a bank account. Therefore, when I requested for recommendation to Kirtipur Municipality, the executive officer of the municipality Tulsi Ram Gautam denied providing me recommendation contending that citizenship certificate cannot be granted from the name of father to a married daughter. My inherent right has been violated because of being woman showing the ground of marriage and I have been deprived from the right to equality guaranteed by the Article 11 of the Constitution of the Kingdom of Nepal, 1990, right to carry out profession and business provided by Article 12 and right to property provided by Article 17 of the Constitution and the legal rights provided by Section 3 of the Citizenship Act, 1963 and Rule 4(3) of the Citizenship Rules 1992. I have come to file this writ petition because no other alternative remedy is available in this respect.

Article 9 of the Convention on the Elimination of

all Forms of Discrimination Against Women has provided that, state parties shall grant women equal rights with men to acquire citizenship and Nepal is a state party to that convention and therefore, it is the obligation of the state to comply with that convention. Article 9(1) of the Constitution of the Kingdom of Nepal, 1990 and Section 3 of Nepal Citizenship Act, 1963 have provided that a person shall be deemed to be the citizens of Nepal by descent if his or her father or mother was a citizen of Nepal at his or her birth. Therefore, it is the matter of choice of a woman to obtain the citizenship either from the name of her father or her husband; however, women have been deprived from this right in practice.

Therefore, I it is requested to issue the writ of Mandamus in the name of Kirtipur Municipality to provide recommendation for citizenship as per the request of the petitioner Nakkali Maharjan along with the interpretation made for other such women residing in the country suffering from similar problem. It is stated in the writ petition filed dated 2063/4/22 (August 7, 2006).

In the order of this court dated 2063/5/1 (August 17, 2006) it is stated that, the respondents shall be required to submit their written response within 15 days excluding the time necessary for the journey explaining what has happened in this case? Why should the order as sought by the petitioner not be issued? The writ petition shall be presented for hearing as per the rule.

In the written response submitted on behalf of the Office of the Prime Minister and Council of Ministers it is stated that the Constitution of the Kingdom of Nepal, 1990 and Citizenship Act, 1963 have not deprived the petitioner from obtaining citizenship certificate from the name of her father. No decision has been taken from this office regarding whether a married woman should be allowed to obtain the citizenship from the name of her father or her husband. The writ petition filed making respondent to this office should be quashed.

In the written response submitted on behalf of the Ministry of Law, Justice and Parliamentary Affairs it is stated that in regard to the matter of obtaining citizenship by a married daughter on behalf of her father, she can obtain the citizenship certificate from the name of her husband if he is a Nepali citizen. If the husband is a foreigner she can obtain citizenship certificate pursuant to Section 9(6) of Nepal Citizenship Act, 1963 and Rule 4(3) of Citizenship Rules, 2049 (1993). Therefore, the plea of the writ petitioner is unreasonable and unjustifiable. Therefore, the writ petition should be quashed.

In the written response the submitted on behalf of Kirtipur Municipality it is stated that, no application of any of the resident of this municipality who

has filed application for obtaining citizenship by descent from the name of either or mother has been returned from this Kirtipur Municipality. Since the writ petitioner Nakkali Maharjan has mentioned her husband's name in the application form but she had not submitted the certificate substantiating her marital relationship and therefore, the recommendation has not been provided as per her request. If the recommendation is requested for obtaining citizenship by descent from the name of one's father or mother there is no question of rejecting the application without making recommendation. Therefore, the writ petition should be quashed.

The Government of Nepal, Ministry of Home Affairs in its written response has stated that the Ministry has not done any act violating any of the fundamental right of the petitioner provided by the constitution and therefore, the writ petition should be quashed.

From the writ petition filed by the petitioner it has been obvious that she has not filed application to this office for obtaining citizenship certificate and therefore this office has not done any act infringing the fundamental right of the petitioner. Citizenship certificate will be provided to married women upon submitting an application for obtaining citizenship by descent mentioning the name of either father or husband. Thus, the writ petition filed by making this office as respondent should be quashed. It is stated in the written response submitted by District Administration Office Kathmandu.

The writ petition filed based on hunch without mentioning which of the constitutional or legal right of the petitioner has been violated from which of the act of this Ministry and therefore, should be quashed. It is stated in the written response submitted by Government of Nepal, Ministry of Women, Children and Social Welfare.

In this writ petition presented before the bench as per the rule for hearing, the learned advocates representing the petitioners including Sapana Malla Pradhan, Meera Dhungana, Ratna Kaji Shrestha, and Sabin Shrestha argued that compelling women to obtain citizenship based on marital status is against the constitution and law. A married woman has right to self determination of making choice of whether to obtain citizenship certificate from the name of her father or husband. Therefore, the writ of mandamus should be issued in the name of Kirtipur Municipality which denied for making recommendation to the applicant Nakkali Maharjan for obtaining citizenship from the name of her father to make recommendation thereof as per the request of the applicant.

Learned Deputy Government Attorney Mr. Brajesh Pyakurel representing on behalf of the Government

of Nepal, Office of the Prime Minister and Council of Ministers has argued that law has not barred the married women from obtaining citizenship by descent in the name of her father.

Advocate Sujandra Maharjan representing on behalf of Kirtipur has stated that the applicant Nakkali Maharjan in her application form submitted for obtaining citizenship certificate has mentioned her husband's name and intended to obtain citizenship certificate by mentioning her husband's name however she has not submitted the evidence substantiating her marital relationship; therefore, recommendation has not been provided thereto. There is no situation of rejecting the application and deny to make recommendation if an application is submitted for recommendation for obtaining citizenship certificate by descent in the name of either father or mother. Therefore, the writ petition should be quashed.

After hearing the arguments presented by the learned advocates and reviewing the documents enclosed in the case file including the writ petition the court has to decide whether or not an order as sought by the petitioner needs to be issued?

2. To consider about the ruling, in the writ petition it is stated that, the constitution in the Article 11 of the Kingdom of Nepal, 1990, the right to equality has been guaranteed. Article 9(1) of the Constitution and Section 3 of the Citizenship Act, 19963 provide that any person, whose father or mother was a citizen of Nepal at his or her birth, shall be deemed to be the citizen of Nepal by descent. Likewise, Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women provides that "States Parties shall grant women equal rights with men to acquire Nationality" and Nepal has already ratified that convention and therefore, married woman has right to make choice whether to obtain citizenship in the name of her father or husband. On these grounds, a writ of mandamus has been sought in the name of Kirtipur Municipality causing it to make recommendation wherefrom the Executive Officer denied making recommendation for citizenship when the petitioner had asked for it stating that a married woman cannot obtain citizenship from the name of father. The order of mandamus has also been sought in the name of other respondents making interpretation in respect to other women residing in the country who have been suffered from such problem. Going through the written response submitted from Kirtipur Municipality it is stated that, the petitioner Nakkali Maharjan in her application form submitted for obtaining citizenship

certificate has mentioned her husband's name and intended to obtain citizenship certificate by mentioning her husband's name however she has not submitted the evidence substantiating her marital relationship; therefore, recommendation has not been provided thereto.

3. Going through the duplicate copy of the application form submitted by the petitioner Nakkali Maharjan for obtaining citizenship, it is mentioned as :- Nakkali Maharjan with an age of 29 years, daughter of Dev Maharjan, resident of Kirtipur Municipality Ward No 6 which also contained the Citizenship Certificate Number of her father which has been verified/ certified from the Ward Secretary of Ward No 6 on July 16, 2006. The Executive Officer of the respondent Kirtipur Municipality has not made recommendation to it and therefore, the contention of the written response of Kirtipur Municipality that the petitioner had intended to obtain citizenship certificate by mentioning the name of her husband does not seem to be based on fact.
4. Article 11 of the Constitution of the Kingdom of Nepal, 1990 which was in force at the time of filing of this writ petition guaranteed the right to equality and Article 13 of the Interim Constitution of Nepal, 2007 which is now in force has provided the right to equality. In Clause (1) of Article 13, it is provided that "All citizens shall be equal before the law. No person shall be denied the equal protection of the laws. Likewise, in Clause (2) it is provided that "No discrimination shall be made against any citizen in the application of general laws on grounds of religion, color, sex, caste, tribe, origin, language or ideological conviction or any of these." Guaranteeing these constitutional provisions of fundamental rights the Article 32 has ensured the right to proceed in the manner set forth in Article 107 for the enforcement of these rights.
5. Article 9(1) of the Constitution of the Kingdom of Nepal, 1990 has provided the constitutional provision that any person whose father or mother was a citizen of Nepal at his or her birth shall be a citizen of Nepal by descent. Likewise, according to the Article 8(2) of the Interim Constitution of Nepal, 2007 "At the commencement of this Constitution, the following persons who have their permanent domicile in Nepal shall be deemed to be the citizens of Nepal by descent:
 - (a) any person who has acquired citizenship by descent prior to the commencement of this Constitution;

(b) any person whose father or mother was a citizen of Nepal at his or her birth.

It is so provided in the constitution.

6. In Section 3(1) of Nepal Citizenship Act, 2006 it is provided that “A person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent.”
7. According to Article 15 of the Universal Declaration of Human Rights, “Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. Article 9(1) of Convention on the Elimination of All Forms of Discrimination against Women States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. Thus, the convention has provided the women equal rights with men to acquire, change or retain their nationality and Nepal has ratified that convention and has become a state party to that convention.
8. According to Section 9(1) of Nepal Treaty Act, 1990 “ In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws. As there is such legal provision as

a state party to these international conventions it is the duty of Nepal to discharge the obligation according to these International Conventions.

9. In this case, from the written response of the respondent Kirtipur Municipality it has been accepted that Kirtipur Municipality has denied to make recommendation to the petitioner for obtaining citizenship in the name of father as it has been obvious from the case file. In such situation the petitioner has been discriminated on the ground of sex/gender and marital status and by denying her recommendation depriving her from obtaining citizenship certificate violating the provision of the above mentioned International Conventions, the provisions of Article 8(2) of the Interim Constitution of Nepal, 2007 and Section 3(1) of Nepal Treaty Act, 2006 that “ A person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent. Such act of Kirtipur Municipality denying the petitioner to make recommendation cannot be held legal. Therefore, the writ of mandamus is hereby issued in the name of Kirtipur Municipality to provide recommendation to the petitioner Nakkali Maharjan to obtain Nepali citizenship certificate from the name of her father as per her application. The case file shall be handed over as per the rule.

I concur with the above opinion

Honorable Justice Kalyan Shrestha

*Done on Wednesday the 4th day of the month of
Baishakh of the Year 2065 (April 16, 2008)*

Office of the Prime Minister and Council of Ministers

Asar 12, 2066 (26th June, 2009), N.K.P. 2066, No. 6, Decision No. 8175, Pg. 1014

Supreme Court of Nepal, Division Bench

Hon. Justice Ms. Gauri Dhakal

Hon. Justice Mr. Rajendra Prasad Koirala

2065-WO-0035

Date of verdict: Friday, 26th June, 2009

Subject: Mandamus

Mr. Ranjit Thapa, resident of Kathmandu Metropolitan City, Ward No. 35, Kathmandu district, et al.1 Petitioner

Vs.

Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu, et al.1 Respondent

- *Section 3 of Nepal Citizenship Act, 2006 as well has conferred the right to obtain citizenship certificate either from the name of father or mother and has thus included mother and father both as the ancestor. Hence, citizenship certificate may be granted to the petitioner, if he submits an application along with the recommendation of concerned body and fulfills the prescribed procedure, from any one address out of the address of his mother or father as per his choice in case the addresses of his father and mother are different. (Paragraph No. 8)*

Precedents Adopted:

Related Acts: Section 3(1), 3 of Nepal Citizenship Act, 2006

Rule 3(1) of Nepal Citizenship Rules, 2006

Article 8(2), 22 of the Interim Constitution of Nepal, 2007

Section 9(1) of the Nepal Treaties Act, 1990

Order of Justice Ms. Gauri Dhakal: The brief of the facts and judgment of the present writ petition filed to this court pursuant to Articles 32 and 107 of the Interim Constitution of Nepal, 2007 and presented before this bench are as follows:

We, the petitioners, have locus standi pursuant to Article 107 on account of being Nepali citizens. From among the petitioners, I, Ranjit Thapa, am a person deprived of citizenship. I am the

son of Ms. Lila Raymajhi (Thapa) resident of Kathmandu Metropolitan City, Ward No. 35, of Kathmandu district and Mr. Sharad Bahadur Thapa, resident of Sharada Batase VDC, Ward No. 01 of Kabhrepalanchowk district. I was born on 24th August, 1986 and now I am 21 years of age. Both of my parents are Nepali citizens and have obtained citizenship certificates as well. As my father has disregarded and took no care of me and my mother, did not provide us subsistence from the beginning therefore, we have been staying in the maternal home of my mother. I studied in Ratna Shiksha Sadan, Koteshwor of Kathmandu.

After graduating SLC, I requested my father Sharad Bahadur Thapa to confer me citizenship however, he reacted rudely and said "Whatever you do but I will not confer you citizenship". Thus, I decided to obtain citizenship from the name of my mother and submitted application for recommendation on 4th June, 2008 before the Ward Office of Kathmandu Metropolitan City, Ward No. 35, of Kathmandu district for obtaining citizenship. Upon receiving recommendation from Ward Office, I approached the District Administration Office, Kathmandu located at Kathmandu Metropolitan City, Ward No. 11, Babarmahal. The Office ordered for conduction of Police Public Field Inquiry and the process of Schedule 5 and 3 as well. Metropolitan Police Circle, New Baneshwor on the day of 6th June, 2008 completed Public Field Inquiry. After duly attaching the photocopies of citizenship certificates of the persons whose names were mentioned in the

Schedule Format, filling up the Scheduled form and submitted all the necessary documents before District Administration Office, Kathmandu after fulfilling all the required procedures. Then, the Chief District Officer stated orally that “ ‘ descent’ denotes of father, as you have mentioned the father’s address at Kabhrepalanchowk district, this does not come under my jurisdiction.” Through this oral decree, he returned me the application and all other documents collected after following the procedure.

Under the heading of ‘Acquisition of Nepali Citizenship by Descent’ in Section 3 of Nepal Citizenship Act, 2006, it is clearly laid down that: “A person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent.” Thus, under the definition of the word ‘descent’ both father and mother have been included. The law also has granted the right to the person desiring to obtain citizenship to make choice from whose name he/she has to obtain it.

Rule 3(1) of Nepal Citizenship Rules, 2006 has clearly stipulated that: “A Nepali citizen who has completed 16 years of age and intends to obtain Nepali citizenship by descent certificate has make application, in the format referred to in Schedule 1 before the concerned Chief District Officer also enclosing the citizenship certificate of father or mother or any other close relative within three generations of his or her lineage and a recommendation made by the concerned local body establishing the birth place and relationship or duplicate copy of birth registration certificate. “

Apart from our constitutional and legal provisions, the treaties and conventions to which Nepal is a party have also assumed the right to citizenship as a human right. Article 15 of Universal Declaration of Human Rights (UDHR), 1948 has enshrined that “Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality or denied the right to change his nationality.” Article 24 of the International Covenant on Civil and Political Rights, 1966 has provided that every child shall be registered immediately after birth and shall have a name; every child has the right to acquire a nationality. Moreover, Article 9(2) of the UN Convention on the Elimination of All Forms of Discrimination, 1979 has recognized that State parties shall grant women equal rights with respect to the nationality of their children. Our Constitution and laws also have made the corresponding provisions. Article 7 Convention on the Rights Childs, 1989 has further specified that the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible the right to know and be cared for by his parents.

The provisions of above treaties and conventions have guaranteed the right to confer citizenship

to both men and women. The legal as well as constitutional provisions have provided the right to confer citizenship to mothers as well. However, in practice, the definition of descent is made discriminatorily and the person who wants to derive identity from mother has been denied of identity and being made stateless.

The above treaties and conventions to which Nepal is a party are the fundamental instruments of human rights. Nepal has accepted the obligations under them without any reservation. Article 156 of the Interim Constitution of Nepal, 2007 has laid down that the ratification, accession, approval and assent of the treaties shall be as determined by the law. Section 9(1) of the Nepal Treaties Act, 1990 in the same spirit has clearly stated that: “In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law, to the extent of such inconsistency shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws.”

As stipulated in the treaty our Constitution has granted the right to mother (woman) to confer her citizenship or identity to her offspring. However, in practice, the official entrusted with enforcing those rights himself has not enforced that right has deprived me, Ranjit Thapa, one of the petitioners, of the right to identity. Therefore, I pray for the issuance of mandamus and/or any other necessary order from the respected Court to provide me citizenship from the name of my mother and to make interpretation in case of other persons aggrieved like me. I also pray that this writ petition be granted preferential hearing. It is stated in the writ petition filed at this court dated 4th August, 2008.

In the order of this court dated 6th August 2008 it is stated “What has happened in this regard, why an order as sought by the petitioner should not be issued. The respondent shall be notified attaching a copy of order, for submitting written responses, through the Office of the Attorney General, within 15 days of receiving this order excluding the period of travel enclosing the relevant documents. The carbon copy of the notice shall be sent to the Office of the Attorney General. The case shall be duly presented after filing of written responses or upon expiry of time period. Moreover, as the applicant has sought preferential hearing and a significant issue of right to citizenship is involved in this case, preferential hearing shall be made of this case pursuant to Rule 63(3) of the Supreme Court Rules, 1992.”

The written response submitted on behalf of the Office of the Prime Minister and Council of Ministers

dated 1st September, 2008 stated that Article 8(2) of the Interim Constitution of Nepal, 2007 provides 'that at the commencement of this Constitution any person who has his or her permanent domicile in Nepal and whose father or mother was a citizen of Nepal at his or her birth shall be deemed to be the citizen of Nepal by descent.' Moreover, pursuant to Section 3 (1) of Nepal Citizenship Act, 2006, it has been clearly provided that "A person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent. Likewise, the official designated by Section 9 of the same Act shall provide citizenship upon fulfillment of procedure pursuant to Rule 3 of Nepal Citizenship Rules, 2006. No legal restriction has been imposed to this course. As the opponent petitioner has submitted application before an unconcerned District Administration Office, he could not obtain citizenship certificate which he has himself accepted in his petition. The legal procedure prescribed by law has not been fulfilled in his application. If any person for his convenience does not follow the process and procedure prescribed by law to avail or use facilities used by common people it will also be against the spirit of rule of law. Therefore, the plea of the petitioner is not lawful and therefore, the writ petition should be quashed. It is not clear why other respondents have filed this writ petition based on what type of locus standi. If the other respondents have filed this writ petition due to the violation of petitioner Ranjit Thapa's fundamental rights, they do not have locus standi to file this petition. Therefore, the writ petition deserves to be quashed. Likewise, the written response submitted on behalf of Government of Nepal, Ministry of Home Affairs stated that as regard the pleas of writ petitioners, the Nepali citizens who have fulfilled the prescribed terms and process prescribed by prevailing laws are entitled to obtain Nepali citizenship certificates from the concerned agency and as such this writ petition needs to be quashed as it lacks legal grounds.

The written response submitted on behalf of the District Administration Office, Kathmandu states that in order to ensure easy availability of Nepali citizenship certificates, a policy of distributing Nepali citizenship certificates from all the 75 District Administration Offices has been pursued. Section 3 (1) of Nepal Citizenship Act, 2006 has clearly provided that "A person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent. The citizenship of the applicant's father is issued from Kabhrepalanchowk district and the address of his mother after her marriage rests with that of the husband's one. Hence, the applicant is entitled to obtain Nepali citizenship certificate from the Kabhrepalanchowk district itself.

Hence, the writ needs to be quashed also on the basis of question over jurisdiction."

The written response submitted on behalf of the Ministry of Law, Justice and Constituent Assembly stated that the applicant has not been able to clarify which action of this Ministry violated his constitutional rights. Pursuant to Section 3 of Nepal Citizenship Act, 2006 and Article 8(2) of the Interim Constitution of Nepal, 2007, any person can obtain citizenship certificate from his/her mother's name. Only the processes and procedures prescribed by law have to be followed. Hence, the writ as sought by the petitioner need not be issued and the writ petition has to be quashed.

In the present writ petition scheduled in daily cause list and presented before this bench for delivering judgment as per the rule, going through the case file and listening to the arguments of learned advocates representing on behalf of the petitioner viz. Mr. Narendra Pathak, Ms. Mira Dhungana and Ms. Sushma Gautam who pleaded that Nepal Citizenship Act, 2006 has provided that citizenship certificate can be obtained in the name of mother in case father does not confer or a person can obtain citizenship certificate in the name of either mother or father. Interim Constitution of Nepal, 2007 and various international treaties, to which Nepal is a party/signatory, have also ensured the condition that no children shall remain stateless. When the petitioner submitted application for citizenship to District Administration Office, Kathmandu to obtain citizenship certificate from the name of mother after his father denied to confer him citizenship, along with the field inquiry report, recommendation of Kathmandu Metropolitan City, birth certificate and the mother's citizenship certificate issued from Kathmandu district. The Chief District Officer returned the petitioner without issuing citizenship certificate asserting that 'descent' denotes 'of the father side' and as his father's address is at Kabhrepalanchowk district, citizenship certificate cannot be issued from Kathmandu district. Therefore, the writ of mandamus should be issued in the name of respondents to provide the petitioner the citizenship certificate from either from the name of mother or father as per his choice in case he approaches with the necessary recommendation.

Learned Joint Government Attorney Mr. Kiran Poudyal representing the respondent Government of Nepal argued that Nepal Citizenship Act, 2006 itself has provided that citizenship certificate can be obtained in the name of either mother or father. The petitioner of this writ petition has not been denied to provide citizenship certificate. Since his father's address is at Kabhrepalanchowk district, in case the petitioner submits application in that district along with the recommendation, then citizenship

certificate can be obtained. Hence, the writ petition should be quashed. After hearing these arguments the court has to decide whether or not the writ as sought by the petitioner should be issued.

My father Sharad Bahadur Thapa did not agree to confer me citizenship and I submitted application in the District Administration Office along with the Kathmandu Metropolitan City, Ward No. 35, of Kathmandu for obtaining citizenship in the name of my mother Lila Rayamajhi Thapa. After conducting Public Field Inquiry according to the order of that office duly attaching the photocopies of citizenship certificates of the persons whose names were mentioned in the Schedule Format, filling up the Scheduled form, I submitted all the necessary documents before District Administration Office, Kathmandu fulfilling all the required procedures. Then, the Chief District Officer stated orally that *'The word 'descent' denotes 'of the father', as you have mentioned the father's address at Kabhrepalanchowk district, this does not come under my jurisdiction.'* Section 3 of Nepal Citizenship Act, 2006 has included both of father and mother under the definition of descent as well as granted the right to choose from whose name citizenship certificate is to be obtained. Likewise, Rule 3(1) of Nepal Citizenship Rules, 2006 has clearly stipulated that: *"A Nepali citizen who has completed 16 years of age and desires to obtain Nepali citizenship certificate have to apply pursuant to the format of Schedule 1 before the concerned Chief District Officer along with the citizenship certificate of father or mother or any other close relative within three generations of paternal side and a recommendation made by the concerned local body establishing the birth place and relationship or duplicate copy of birth registration certificate".*

Nepal has also ratified the national and international treaties as well as conventions in this regard. Hence, writ of mandamus and/or any other necessary order should be issued in the name of respondent from the respected Court to provide me citizenship from the name of my mother and to interpret in case of other aggrieved persons like me. This is the gist of the writ filed by the petitioners. The written responses submitted by District Administration Office, Kathmandu and other respondents have stated that since the petitioner is entitled to obtain Nepali citizenship certificate from the Kabhrepalanchowk district and the writ petition should be quashed on the ground of the question over jurisdiction.

Article 8(2) of the Interim Constitution of Nepal, 2007 has laid down that *"At the commencement of this Constitution, the following persons who have their permanent domicile in Nepal shall be deemed to be the citizens of Nepal by descent:*

- a) *Any person who has acquired citizenship by descent prior to the commencement of this Constitution;*
- b) *Any person whose father or mother was a citizen of Nepal at his or her birth."*

Moreover, Article 22 of the Constitution has provided that each child shall have the right to identity and name.

2. Section 3 (1) of Nepal Citizenship Act, 2006 has clearly laid down that *"A person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent."* Similarly, Rule 3(1) of Nepal Citizenship Rules, 2006 has clearly stipulated that: *"A Nepali citizen who has completed 16 years of age and aspiring for Nepali citizenship certificate shall have to apply pursuant to the format of Schedule 1 before the concerned Chief District Officer also attaching a) the citizenship certificate of father or mother or any other close relative within three generations and b) a recommendation made by the concerned local body establishing the birth place and relationship or duplicate copy of birth registration certificate."*

3. Moreover, Article 15 of Universal Declaration of Human Rights (UDHR), 1948 has enshrined that *"Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality or denied the right to change his nationality."* Thus, it has guaranteed the right to nationality as a human right in itself.

4. Article 24 (3) of the International Covenant on Civil and Political Rights, 1966 has provided that every child has the right to acquire a nationality.

5. Article 9(1) UN Convention on the Elimination of All Forms of Discrimination, 1979 has expressly provided that: *"State parties shall grant equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife render her stateless or force upon her the nationality of husband. Likewise, Article 9(2) has prescribed that the State parties shall grant women equal rights with men with respect to the nationality of their children."*

6. Article 7(1) of Child Rights Convention, 1989 has further specified that *"The child should be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible the right to know and be cared for by his parents."*

7. Upon considering the above mentioned national and international provisions, it can be concluded that every person has a right to his or her identity and citizenship and that right may be enjoyed by

women like that of men. Nepal has also ratified and accessed the above instruments related to human rights. Section 9(1) of the Nepal Treaties Act, 1990 has clearly stated that: *In case of the provisions of a treaty to which Nepal has become a party following its ratification accession, acceptance or approval by the Parliament is inconsistent with the provisions of prevailing laws, the inconsistent provision of law shall be void to the extent of such inconsistency for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepal laws.* Therefore, the provisions of these treaties are valid as Nepal laws and are binding for Nepal. The provisions relating to citizenship enshrined in the Interim Constitution of Nepal, 2007, Nepal Citizenship Act, 2006 and Nepal Citizenship Rules, 2006 are consistent with the above mentioned international instruments related to human rights and there is no any type of discrimination between men and women as regard to obtaining citizenship.

8. In the present case, there is no dispute to the fact that the petitioner is a Nepali citizen and Nepal Citizenship Act, 2006 and Citizenship Rules 2006 have provided the right to petitioner Ranjit Thapa to make choice whether to obtain citizenship from the name of father or mother which has been accepted by the District Administration Office Kathmandu in its written response. However, to consider about the plea of that Office that 'descent' denote 'of the father' and as the father's address is recorded at Kabhrepalanchowk district, citizenship certificate cannot be obtained from Kathmandu district. Section 3 of Nepal Citizenship Act, 2006

has conferred the right to obtain citizenship either from the father or mother's name and has thus 'descent' included both of mother and father. Hence, the interpretation that the petitioner has to seek citizenship certificate only from the address of his father shall be contradictory to the letter and spirit Nepal Citizenship Act, 2006 as well as other statutes. It would also be contrary to the international standards of human rights.

Therefore, as there is unanimity that the petitioner Ranjit Thapa is a bona fide Nepali citizen and is qualified according to the Interim Constitution of Nepal, 2007, Nepal Citizenship Act, 2006 and Nepal Citizenship Rules, 2006 to obtain Nepali citizenship certificate by descent which is corroborated even by the written responses of respondents and as such though the addresses of his mother and father are separate, an order of mandamus is hereby issued in the name of respondents to provide him citizenship certificate from any one address out of the addresses of his mother or father as per his choice in case he submits an application along with the recommendation of concerned body and fulfills the prescribed procedure. Let the notice of this order be served to the respondents and the case file be duly returned after writing it off the registry.

I concur with the aforementioned opinion.

Mr. Rajendra Prasad Koirala

[Done on Friday, 26th June, 2009]

Bench Officer: Mr. Narayan Prasad Parajuli



Supreme Court, Division Bench

Honourable Justice Damodar Prasad Sharma

Honourable Justice Ram Kumar Prasad Shah

Criminal Appeal No.0622 of the year 2064

Date of Decision: 2066/11/18/03

(Tuesday, 02 March, 2010)

Case: Removal from Nepali Citizenship

Ashok Kumar Shah, resident of T.C.N. Road, ward No. 10 of Hetauda Municipality
of Makwanpur District1 Appellant/Defendant

Vs.

The Government of Nepal, Home Ministry.....1 Opponent/Plaintiff

Original Decision By: Home Ministry**Appellate Decision By:**

Hon.Judge Mr. Krishna Prasad Shrestha

Hon.Judge Mr. Laxman Mani Risal

- *There is no situation to assume that a person is a foreign citizen simply because he/she has not obtained the Nepalese citizenship in any time period despite permanently residing in Nepal, and it has no legal base.*
- *No legal provision is found to have existed that each person having permanent residency in Nepal must obtain citizenship certificate; hence, it is not right to assume automatically remained as a non-Nepalese citizen or a foreign citizen simply because the citizenship certificate was not obtained in the then situation. (Paragraph No.2)*
- *The party holding the pleading that one is not a permanent resident of Nepal or is a foreign citizen has to establish factually that he is a citizen of which foreign country. (Paragraph No.3)*
- *Each of the decision makers shall have to make decision only on the basis of prevailing Nepal law and facts and evidence. The decision made on the basis of the facts and evidence not contained, is supposed to be the decision made arbitrarily and in the absence of judicial spirit, and such decision is voidable. (Paragraph No.4)*

On behalf of the Appellant/Defendant: Learned Senior Advocate Mr. Mahadev Yadav and Advocate Ram Bandhu Sharma

On behalf of the Opponent/Plaintiff: Learned Joint Attorney Mahesh Thapa

Followed Precedent:

Relevant law: Section 4 (A) of Nepal Citizenship Act, 2009 Section 4 (A)

Decision:

Justice Ram Kumar Prasad Shah: The brief facts and decision of the present case filed against the decision of the Appellate Court, Patan dated 2062/10/17 (30 January, 2006) seeking for the leave of appeal and after the leave of appeal has been granted as per Section 12 (1) clause (A) of the Judicial Administration Act, 1991 have been as follows.

Ashok Kumar Shah obtained (No. not disclosed) Nepalese citizenship certificate on date 2024/8/8 (November 24, 1967 A.D.) by birth from Narayani Zonal Commissioner's Office, Birgunj by showing Jay Narayan Shah as father and the address as Makwanpur District, Hetauda Municipality, Ward No. 10.

Bijay Kumar Shah obtained Nepalese citizenship certificate of C. C. No. 25/128 of descent on date 2053/5/25 (September 10, 1996 A.D.) from District Administration Office, Makwanpur by showing Late Jay Narayan Kalwar Shah as father and the address as Makwanpur District, Hetauda Municipality, Ward No. 10.

An anonymous person putting Paudel as surname has applied a complaint stating that Bijay Kuma Shah (younger brother of Ashok Kumar Shah), a resident of Makwanpur District, Hetauda Municipality, Ward No. 10, has obtained citizenship by committing forgery; hence, action should be taken. Pertaining to the same, the information of action has been demanded by Commission for Investigation of Abuse of Authority as well.

Late Jay Narayan Shah was an Indian. After an anonymous person putting Paudel as Surname furnished the application complaint to get the citizenship of Bijay Kumar Shah, who had got the citizenship of descent, investigated, while enhancing the action after investigating from District Administration Office, Makwanpur through this Office, writing the description that even the citizenship certificate of Ashok Kumar Shah, the elder brother of this Bijay Kumar Shah as well, shall have to be cancelled, the action has been furthered later on.

My ancestral home is in the place called Jaleshwar of Janakpur Zone. Having come to Hetauda in 2008 (1951/52 A.D.) or in 2010 B.S. (1953/54 A.D.), my father stayed by running contract of tavern. My birth took place in Hetauda in 2024 B.S. (1967 A.D.); I know the things before that as far as my parents have narrated. The parental home of the mother lies in India. The father had not obtained the citizenship of Nepal. Citizenship was not needed then. Later, when citizenship was necessary to obtain elderly allowance, the father died on 2052/9/1 (December 16, 1995 A.D.), while trying to obtain citizenship. The elder brother, Ashok Kumar, got the citizenship by birth on 2024/8/8 (November 24, 1967 A.D.) from Narayani Zonal Commissioner's Office; the Team indicated my name as a minor in the citizenship of the elder brother, and I have obtained the citizenship on the basis of the father's death certificate; hence, there was no deal of cash to obtain the citizenship. Statement deed made by Bijay Kumar Shah caught in the complaint reads as above.

The house of the father and grandfather lies in the Bihar State of India. Presently, the village is not known. The father had come and stayed in Hetauda since about 2005 B.S. (1948/49 A.D.). The births of mine and younger brother, Bijay, took place in Hetauda, Chisapani, and later shifted from Chisapani and came to Hetauda Municipality 10. I do not know what documents were submitted by the younger brother to obtain the citizenship. I have not even identified, either. When I was two years old, the father got a citizenship by birth made from the Narayani Zonal Commissioner's Office. The father did not have Nepalese citizenship certificate. If the father had had Nepalese citizenship certificate, I would have had the citizenship by descent. Hence,

mine has been by birth. My maternal uncle's home lies in India. Must be closer to father and grandfathers. Statement deed made by Ashok Kumar, the elder brother of Bijay Kumar, reads as above.

I know Bijay Kumar, son of Jay Narayan Shah, a resident of Hetauda Municipality, Ward No. 10, T.C.N. Road, as an inhabitant of the town. While making recommendation for the citizenship of Bijay Kumar, in order to confer the citizenship certificate recommended on the basis of his father's death registration certificate in Schedule 1, the citizenship certificate obtained from Narayani Zonal Commissioner's Office, Birgunj, by the elder brother, Ashok Kumar Kalawar, minor registration made on date 2035/9/11 (December 26, 1978 A.D.) in the then Citizenship Team and the recommendation of the Ward Chairperson, though it had to be conferred after justifying whether or not he was qualified to obtain the citizenship certificate after the investigation was held pertaining to that by authorized body, the issue that where, in which place what kind of statement was given is not informed after the citizenship was conferred. Affidavit of Hari Bahadur Mahat, Deputy- Chief of Hetauda Municipality, who has recommended on the Schedule, reads as above.

After sitting on the post such as the Chief of Municipality, it is natural to have information of the inhabitants of the town. I know this Bijay Kumar. After being recommended by the Deputy-Chief on the Schedule, I identified so that there would not be obstruction in the welfare of the inhabitants of the town. Affidavit of Dor Mani Paudel, the Chief of Hetauda Municipality, who has recommended on the Schedule, reads as above.

Due to the situation that there was no status of Nepalese citizenship before the death of the father of Ashok Kumar, the situation that non-Nepalese citizen was mentioned by the letter of District Administration Office, Makwanpur, the situation that the citizenship certificate by birth submitted by this Ashok Kumar has appeared to be impractical and untrustworthy, and the situation of oral differences of both the brothers on the issue of the migration and birthplace of the father as well, this Ashok Kumar is decided to have been a foreign citizen. By cancelling the Nepalese citizenship certificate of Ashok Kumar Shah, issued by Narayani Zonal Commissioner's Office, Birgunj as per Clause 10 (3 A) of Nepal Citizenship Act, 2020, with citizenship No. (not disclosed) and address written as Dist. Makwanpur, Hetauda Municipality, Ward No. 10, he is decided to have been omitted from the Nepalese citizenship and the immovable property to be done as per law. Moreover, Ashok Kumar Shah and those including the parties concerned who

recommended and identified shall be taken action as per Clause 15 of Nepal Citizenship Act, 2020. Decision made on date 2058/11/21 (March 5, 2002 A.D.) by His Majesty's Government (Home Minister) reads as above.

The aforementioned decision is not satisfactory. As per Clause 10 (A) of Nepal Citizenship Act, 2020, only His Majesty's Government gives order to omit from the citizenship by cancelling if it is known that the citizenship has been obtained on the basis of false descriptions. His Majesty's Government is not supposed to make decision. As it is an issue of judicial conclusion, this is the right of a Court, but not of His Majesty's Government. By His Majesty's Government, is does not refer to just the Home Minister; hence, the Home Minister alone cannot give order. Hence, the aforementioned decision is against the prevailing law. Although it is seen from different evidence that I am a Nepalese citizen; as I am a citizen and my citizenship certificate should be maintained as it is by revoking the decision of the Honorable Home Minister made without evaluating the proof of this. Appeal furnished in the Appellate Court, Hetauda by the defendant, Ashok Shah, reads as above.

In this, from the evidence of the documents of 2024/8/11 (November 27, 1967 A.D.) and of 2026/10/2 (January, 15, 1970 A.D.) passed and of the Civil Case. No. 2/211, 3/212, 1/210 of 2046 B.S. (1989/90 A.D.) and Civil Case No. 5/224 of 2047 B.S. (1990/91 A.D.) and Civil Case No. 71/290 of 2048 B.S. (1991/92 A.D.), in the situation that these appellars are seen to have been Nepalese, the decision of His Majesty's Government of the date of 2058/11/21 (March 5, 2002 A.D.) made to revoke their citizenships is seen to be different, being incongruent; hence, submit the respondent by importing. Order of Appellate Court, Hetauda of 2059/10/19 (02 February, 2003) reads as above.

The opinion of Honorable Judge Mr. Govinda Kumar Upadhyay is that in this, instead of depriving the justice seeker of the remedy of justice, giving remedy as far as available is the main objective of justice; hence, it is seen necessary to send to the body with jurisdiction rather than to revoke the appeal of the appellant. Hence, it does not appear right to assume His Majesty's Government, Home Minister as a body under the territorial jurisdiction of this Court; hence, the appeal upon the decision made by His Majesty's Government, Home Minister, does not seem to be tried in this Court. Making decision upon the appeal of the appellant is still remaining; hence, for making decision from the Appellate Court, Patan which has the jurisdiction, it is decided that the document file is to be sent to the Appellate Court, Patan for the sake of decision, by stipulating the dates for the party present and giving its information to the

respondent; and the opinion of Honorable Judge Mr. Atma Ram Bhattarai is that in this, the decision cannot be made, taking up the jurisdiction by entering into the justification of the present case, upon the appeal furnished upon the decision made by Home Ministry, Kathmandu in the situation of not falling within the territorial jurisdiction of the Court; hence, due to the lack of jurisdiction, decision needs not be made by entering into the justification of the case. The present appeal is decided to be revoked. Despite being agreed with the opinion of Honorable Judge Mr. Govinda Kumar Upadhyay up to that the present appeal does not fall within the territorial jurisdiction of the Court due to the lack of jurisdiction, it is agreeable with the opinion to send to the Court within the jurisdiction (Appellate Court, Patan) for the sake of action; hence, I have expressed my different opinion by being disagreed up to the opinion of sending for the sake of action. As the opinions are separate, submit in front of the third Honorable Judge as per Clause 8 (4) of Justice Administration Act, 1991. Decision of the date of 2060/4/25/1 (Sunday, August 10, 2003 A.D.), having dissenting opinions of the division bench, reads as above.

The Court that registered then did not raise the issue of jurisdiction when the appeal was filed and even after the date of the appeal filed in this Court, the time limit to file the appeal seems to have remained sufficiently; hence, agreement has been shown upon the opinion expressed by Honorable Judge Mr. Govinda Kumar Upadhyay that by stipulating date, the present appellant should be sent to the Appellate Court, Patan that has the initial jurisdiction of the present appeal. By striking off the case file, stipulating the date telling the present appellant defendants to go to the Appellate Court, Patan, send the evidence attached with document file to the Appellate Court, Patan as per Rule. Decision made on date 2060/10/4 (January 18, 2004 A.D.) by Honorable Chief Judge Mr. Paramanda Jha, of Appellate Court, Hetauda, reads as above.

The decision of the date of 2058/11/21 (March 5, 2002 A.D.) of His Majesty's Government deeming to omit this defendant, Ashok Kumar Shah from the Nepalese citizenship by cancelling his Nepalese citizenship certificate by birth appears to have been correct and hence decided to be valid. Decision of the date of 2062/10/17 (January 30, 2006 A.D.) of the Appellate Court, Patan reads as above.

There is legal provision that the power to omit from Nepalese citizenship is not supposed to be delegated at all as per Clause 14 (B) of Nepal Citizenship Act, 2020. It is not right to cancel my citizenship by the opponent, Home Ministry, by getting me, the applicant defendant, to make statement in Makwanpur District Administration

and by taking that statement into evidence. His Majesty's Government that has the power to take action and make decision has not even got me to make statement for the sake of an opportunity of hearing. The District Administration Office does not have the power to take action of annulling of the citizenship, which was taken up by Narayani Zonal Commissioner's Office. If had, the action of annulling of the citizenship taken up from Birgunj, Parsa is not supposed to be carried on by Makwanpur District Administration. I am a Nepalese citizen. Although His Majesty's Government is supposed to annul the citizenship of false description, it is not congruent that only the Home Minister has done it alone. His Majesty's Government means the Council of Ministers. In Clause 4 (A) of Nepal Citizenship Act, 2009, there is legal provision that the children who were born in Nepal can obtain the citizenship. The District Administration, Makwanpur has not been able to say by birth otherwise while sending upon scrutiny on date 2045/12/20 (April 2, 1989 A.D.). The men of spot investigation have justified that I was born in Nepal; though from the deeds including the cases of partition passed by mother Tara Devi, executed in Makwanpur District Court, and from my educational certificates also that I am being seen to be a Nepalese citizen, the decision made by Home Minister to cancel to make my citizenship void and the decision of the Appellate Court, Patan is revocable; hence, the case should be repeated. Application furnished in this Court by the defendant, Ashok Kumar Shah, reads as above. In this, the matter that right of immovable property has been handed over after the parents of the defendant settled down in Nepal have been seen from the deeds of the dates of 2013/9/17 (December 31, 1956 A.D.) and 2022/12/21 (April 3, 1966 A.D.) and Ashok Kumar Shah Kalawar of the defendants is seen to have obtained the Nepalese citizenship certificate on 2024/8/8 (November 24, 1967 A.D.) by mentioning the descriptions of being a citizen by birth as per the provision of the then Clause 4 (A) of Nepal Citizenship Act, 2009. In the situation that this same defendant, Ashok Kumar Shah, is being seen to have possessed the house and settlement in Nepal by purchasing immovable properties on various dates after obtaining the Nepalese citizenship certificate, the interpretive errors of Clause 4 (A) of Nepal Citizenship Act, 2009, 184 (A) of Court Procedure and Clauses 3, 54 (A) of Evidence Act, 2034 are seen in the decision of Appellate Court, Patan that has validated the decision of Home Ministry made to cancel the Nepalese citizenship of the defendant, without making evaluation and analysis of it; hence, the proof of seeing the present case special leave of appeal has been granted. The order of the date of 2064/11/17 (February 29, 2008 A.D.) of Division Bench of this Court reads as above.

In the present case that has been submitted by being inducted in the daily cause lists as per Rule, by studying the document file along with the appeal, the pleadings made by learned Senior Advocate, Mr. Mahadev Prasad Yadav and Advocate, Ram Bandhu Sharma, present on behalf of the appellant, Ashok Kumar Shah, have been heard including that Ashok Kumar has obtained citizenship as per the legal provision of Nepal Citizenship Act, 2009 on the basis of birth in Nepal. There is no situation of being able to say that he was not born in Nepal. There is no situation to say a person settled down in Nepal a foreigner simply because of not obtaining citizenship. There is no situation that it cannot be disclosed with the investigation that if he is not the citizen of Nepal, he is a citizen of which country; hence, the decision to deprive of the citizenship is erroneous. The right up to omitting from the citizenship by cancelling the citizenship is vested in the Government; the action of including confiscating the properties and taking court actions have happened; and should be revoked. Likewise, the learned Joint- Attorney, Mahesh Thapa, on behalf of the opponent, the Government of Nepal, presented the pleading that as the defendant has made the statement including that the house lies in Indian State. The father had stayed in Hetauda since about 2005, hence, it is justified that they are not Nepalese and obtaining citizenship by two years old Ashok Kumar is not suitable to the law either; hence, the decision should be made valid.

Upon hearing the pleadings of the learned legal professionals and looking into the documents evidence attached with the document file, decision is supposed to be made on whether the decision made by the Appellate Court is congruent or not? And, whether the appeal pleadings of the appellant can be sufficient or not?

2. While considering towards the decision, from the letter of District Administration Office, Makwanpur, in the action surfaced upon the charge of the citizenship obtained by a non-Nepalese citizen including on the basis that citizenship was obtained by submitting the false descriptions with relation of birth, the decision has been made by His Majesty's Government, Home Minister to omit him from the Nepalese citizenship by cancelling the citizenship certificate of the appellant defendant, Ashok Kumar Shah, and the aforementioned decision is seen to have been made valid by the Appellate Court, Patan. While making the statement at District Administration Office, Makwanpur, this appellant defendant, Ashok Kumar is seen to have mentioned that his father had settled down at Chisapani of Hetauda situated in Makwanpur District since around 2005 B.S. (1948/49 A.D.) and that he was also

born at the same place. The fact that his father, Jay Narayan, had settled in Nepal by building a house in Hetauda, and that this Jay Narayan was running a business by opening up a liquor shop is seen from deeds earlier than 2019 B.S. (1962/63 A.D.) and various receipts of the taxes paid since 2028 B.S. (1971/72 A.D.), attached with the document file. Although the parents of this appellant, Ashok Kumar Shah, are not seen to have obtained citizenship certificates, they are seen to have purchased land in their names and settled down by building the house. The father of this appellant, Jay Narayan, a person with a permanent residency in Nepal, is logically considered as a citizen of Nepal until and unless he is justified otherwise, and the plaintiff is not seen to be able to establish factually and definitely, stating that he was a resident of this place of a foreign country or to prove otherwise by submitting any substantial evidence related with this matter. There is no situation to assume that a person is a foreign citizen simply because he/she has not obtained the Nepalese citizenship in any time period despite permanently residing in Nepal, and it has no legal base. Nepalese citizenship is required only to acquire land, to achieve higher education, to register in the Government of Nepal while running any business and occupation, to get appointed to any government posts or if this certificate is supposed to be submitted as per similar other laws. Compulsory legal provision is not found to have existed before 2020 B.S. (1963/64 A.D.) to submit the citizenship certificate for including acquiring land, or running a business or transaction or for any other purpose. Moreover, no legal provision is found to have existed that each person having permanent residency in Nepal must obtain citizenship certificate; hence, it is not right to assume that the father of the appellant, Jay Narayan, automatically remained as a non-Nepalese citizen or a foreign citizen simply because the citizenship certificate was not obtained in the then situation.

3. The appellant, Ashok Kumar, is seen to have obtained Nepalese citizenship by birth from Narayani Zonal Commissioner's Office in 2024 B.S. (1967/68 A.D.) as per the legal provision of Nepal Citizenship Act, 2009, then prevailing, and there was provision that the person born in Nepal shall be the citizen of Nepal as per the aforementioned Act, then prevailing; hence, upon the citizenship obtained as per the then prevailing legal provision, the investigation officer or decision maker also are not found to have been able to mention that matter substantially and definitely, stating that he was

not born in Hetauda of Nepal or that he is a permanent resident of a certain place in foreign country. The party holding the pleading that one is not a permanent resident of Nepal or is a foreign citizen has to establish factually that he is a citizen of which foreign country. In his/her complaint, the person who filed complaint anonymously or the officer who conducted investigation on the basis of that complaint or the decision maker is not found to have been able to definitely say that thing in his/her decision either.

4. Man of spot investigation of the date of 2057/6/2 (September 18, 2000 A.D.), attached with document file, is found to have got it written stating that Ashok Kumar Shah was born in Chisapani of Hetauda on 15/10/1966 A.D. and that it is right that the citizenship certificate was obtained from Narayani Zonal Commissioner's Office. This appellant defendant is seen to have obtained the citizenship by birth on the basis of Clause 4 (A) of Nepal Citizenship Act, 2009. As the legal provision of the aforementioned Clause 4 (A), there is clear provision that the children born in Nepal are allowed to obtain citizenships. Though his statement has been that this Ashok Kumar was born in a place called Chisapani of Hetauda, the matter that this was not so is not seen to have been ruled out by the document file with any substantial and factual evidence. The Home Ministry is seen to have cancelled the citizenship obtained by this Ashok Kumar, on the basis of Clause 10 (3 A) of Nepal Citizenship Act, 2020, stating that it was obtained by submitting false descriptions. But, from the evidence attached with the document file, the situation is being appeared that it has been justified that this Ashok Kumar was born in Nepal and has obtained citizenship as per the then prevailing legal provision of Clause 4 (A) of Nepal Citizenship Act, 2009. In such situation, substantial and definite evidence to be able to justify otherwise is not seen to have been mentioned in the decision of Home Minister of the date of 2058/11/21 (March 5, 2002 A.D.), stating that the defendant lied which description and he is a resident of which country, which village or town. In such situation, the decision made on the basis of baseless and fact-less complaint to omit him from the Nepalese citizenship is seen to have been erroneous. Opposite to this, situation is seen from the documents attached with the document file including that this Ashok Kumar was born in Chisapani, Hetauda of Nepal and he has been permanently residing in Hetauda; upon purchasing on different dates, his parents owned, used, sold and had various

lawsuits upon the properties. But, by ignoring the aforementioned evidence to be examined, the Home Minister is found to have made the decision against the evidence attached with the document file by taking the matters in evidence which is not supposed to be taken for evidence. In the country where there is rule of law, each of the decision makers including Home Minister shall have to make decision only on the basis of prevailing Nepal law and facts and evidence. The decision made on the basis of the facts and evidence not contained in the document file is supposed to be the decision made arbitrarily and in the absence of judicial spirit, and such decision is voidable.

5. Hence, though the situation is seen from the document file that the father of the appellant, Ashok Kumar, had been staying in Nepal by accumulating various immovable properties and running occupation and business; this appellant was born in Nepal and is permanently residing in Nepal by purchasing and possessing immovable properties, the decision made by His Majesty's Government, Home Minister on the date of 2058/11/21 (March 5, 2002 A.D.) to omit from the citizenship without undisputed evidence, saying that he is a foreign citizen on the fabricated basis that he had lied about his

descriptions to obtain citizenship is erroneous; hence, that decision and the decision made by the Appellate Court, Patan on the date of 2062/10/17 (January 30, 2006 A.D.) that has made that decision valid are decided to be revoked opposite to the facts and evidence. Do other things as follows:

Particulars:

As stated above in the decision section the decision of Home Minister level dated 2058/11/21 (March 5, 2002 A.D.) and the decision delivered by the Appellate Court, Patan on the date of 2062/10/17 (January 30, 2006 A.D.) that has made the said decision valid have been revoked and the citizenship of defendant Ashok Kumar Shah could not be held terminated, give memo to the District Administration Office, Makwanpur not to implement the said decision1
For the information of the opponent serve copy of this decision to the Office of Attorney General2
Deduct the registration of this case and duly hand over the case file to the Archive Section3

I agree with the said opinion.

Justice Damodar Prasad Sharma

Handed down on Tuesday, 18 Falgun of the year 2066 (02 March, 2010).



Supreme Court, Special Bench
Honorable justice Balaram K.C
Honorable Justice Bharat Raj Upreti
Honorable Justice Prof. Dr. Bharat Bahadur Karki

Writ No 2067-WS-0017

Date of Issuance of Order: 2067/10/24

Subject: Mandamus et al

Advocate Saroj Nath Pyakurel, resident of Kathmandu Municipality Ward No 32, et al.1 Petitioner

Vs.

Office of the Prime Minister and Council of Ministers et al.1 Respondent

On behalf of the Petitioner: Senior Advocates Mr. Sindhu Nath Pyakurel, Mr. Bishwo Kanta Mainali, and Mr. Shambhu Thapa, Advocates: Sher Bahadur K. C. Mr. Borna Bahadur Karki, Dr. Bhimarjun Acharya, Mr. Tika Ram Bhattarai, Mr. Chandra Kanta Gyawali, Mr Madhav Kumar Basnet, Mr. Ravi Narayan Khanal, Mr. Rishi Ram Ghimire, Mr. Tulsi Bhatta, Mr. Tara Prasad Lamichhane, Mr. Padam Rokka, Mr. Dinesh Raj Satyal and Mr. Subhash Acharya

Related Law: Preamble of the Interim Constitution of Nepal, 2007, Article 1, 2, 8, 9, 10, 11, 46, 63, 65 and 129 thereof,

Section 5(1) (A) of the Electoral Rolls Act, 2006

Order

Justice Balaram K. C:

The short description of the fact of the writ petition filed to this court pursuant to Articles 32, 107(1) and 107(2) of the Interim Constitution of Nepal, 2007 and the judgment thereof is as follows:

The Election Commission has introduced the Program of Collecting Electoral Rolls Containing Image, 2067. Through this program, the Commission has started its work in all Municipalities and V. D. Cs for registering the name in the Electoral Rolls of the Nepalese citizens who have obtained the Nepali Citizenship certificate. However, stating that there had been obstacle in various place in the completion of the work as per that program, with the purpose of including the names of the persons

who have not obtained citizenship certificate, the Commission has decided on 2067/7/16 (November 2, 2010) to register the name in the Electoral Rolls of the persons without citizenship certificate based of land registration certificate, academic certificate and recommendation of the local bodies.

The provisions of Section 11 (1), (2) and (3) of Electoral Rolls Act, 2063 except 'Citizenship Certificate' and the provision of Section 25 (A) and (B) of the same Act are inconsistent with the provisions of Preamble of the Interim Constitution of Nepal, Articles 1, 2, 8, 9, 10, 11, 46, 63, 65 and 129 thereof. The above decision of the Election Commission dated 2067/7/16 (November 2, 2010) is inconsistent with the Section 5(1)(A) and Preamble of the Interim Constitution of Nepal, Articles 1, 2, 8, 9, 10, 11, 46, 63, 65 and 129 thereof. Therefore, we have come to file this petition requesting to declare the above decision null and void and issue necessary order including mandamus pursuant to Articles 32, 107(1) and (2) of the Interim Constitution of Nepal, 2007.

The preamble of the Interim Constitution of Nepal provides about adult franchise and periodic election and Article 2 of the Constitution provides that the sovereignty and the state authority of Nepal shall be vested in the people of Nepal. The Article 8 provides about the citizenship at the commencement of the constitution, Article 9 provides about naturalized or honorary citizenship and Article 10 provides about acquisition and termination of citizenship. Article 46 of the Interim Constitution of Nepal clearly

provides that a person must be a Nepali citizen to become member of the Legislature-Parliament and to become the Prime Minister accordingly. In Article 63 there is provision about the constitution of the Constituent Assembly which also provides that a person must be a Nepali Citizen to become a member of Constituent Assembly and Article 129 of the Constitution provides that the Election Commission shall prepare the Electoral Roll subject to the provision of the Constitution. From the above constitutional provision it is clear that only the name of the persons who have obtained Nepali citizenship certificate have to be included in the Electoral Roll. Therefore, the other provisions of Section 11 (1), (2) and (3) of Electoral Rolls Act, 2006, except 'Citizenship Certificate' and the provision of Section 25 (A) and (B) of the same Act are inconsistent with the provisions of Preamble of the Interim Constitution of Nepal, Articles 1, 2, 8, 9, 10, 11, 46, 63, 65 and 129 thereof. Therefore, these provisions should be declared void ab initio pursuant to Article 32 and 107(1) of the Constitution.

The Section 11(1) of the Electoral Rolls Act, 2006 provides that while registering the name of a person in the Electoral Rolls, the Enrollment Officer may ask the concerned person or his or her family to submit the citizenship certificate, land ownership certificate or any identity card issued by a government office, local body, government owned organization or educational institute, setting out his or her date of birth or age or place of his or her residence. Likewise, in the Section 11(2) it is provided that in the case of failure to submit the evidence sought pursuant to Sub-section (1), the Enrollment Officer may ask such person to submit a recommendation of the concerned Ward of the concerned Village Development Committee or Municipality. Likewise, in Section 11(3), it is provided that the name of a person who fails to submit the recommendation referred to in Sub-section (2) shall not be registered in the Electoral Rolls. Providing so it is stated that nothing shall be deemed to bar the registering of the name of a citizen of Nepal in the Electoral Rolls merely by the reason of his or her failure to submit the Nepalese citizenship certificate.

In Section 25 of the Act, it is provided that no question may be raised in any court about the following matters: (a) As to whether or not the name of any person has been registered in, or may or may not be registered in, the Electoral Rolls of any election constituency; (b) As to the preparation of the Electoral Rolls by the enrollment Officer or the authorized person deputed by him or her or the alteration made by the concerned Official in the Electoral Rolls. Invoking the above mentioned provision the Election Commission has decided on 2067/7/16 (November 2, 2010) to register the name of the person in the Electoral Roll based on land

ownership certificate or any identity card issued by a government office, local body, government owned organization or educational institute. That decision is inconsistent with the Preamble and Articles 1, 2, 8, 9, 10, 11, 46, 63, 65 and 129 of the Interim Constitution of Nepal, 2007 and Section 5(1) (A) of the Electoral Rolls Act, 2006. Therefore, it is requested to declare that decision void through the order of Certiorari.

A person whose name is registered in the Electoral Rolls can also become candidate in the election, and therefore, it will be unconstitutional to register the name of the person who has not obtained the citizenship certificate in the Electoral Rolls. The respondent Election Commission cannot determine whether or not a person is Nepali citizen however; it has to make arrangement of exercising the right to adult franchise only to the persons who have obtained Nepali citizenship certificate. A person who has already been proved to be a Nepali citizen can subsequently become a voter. No person can be determined whether he/she is a Nepali citizen after making him/her the voter at first.

The lifestyle, religion, culture and face of the Tibetan Refugees living in the northern part of Nepal and of the Bhutanese Refugees living in the eastern part of Nepal are similar to the Nepalese people and they also have matrimonial relationship with them. There is no debate on the matter that a child born from the matrimony with the refugees is a foreigner according to the prevailing law of Nepal. However, the refugees and their children are foreigners, despite this, they can study in Nepalese Schools and they have the academic certificate issued from the schools of Nepal. Some of the foreigners have land ownership certificate also. Taking into account of the condition that anyone can take benefit of the open border, it is absolutely necessary to register name in the Electoral Rolls only on the basis of Citizenship certificate. Thus, if the Electoral Roll is prepared on the basis of land ownership certificate and academic certificate without obtaining citizenship certificate, serious crisis may raise over nationality.

In the Section 25 of the Electoral Rolls Act, 2006 it is provided that no question can be raised in any court about different acts carried out by Election Commission. Article 129 provides about functions, duties and powers of the Election Commission. That Article has not restricted from raising question in any court over the acts carried out by the Election Commission. The Act cannot restrict from raising question in any court of the matter in which the constitution itself has not restricted in raising a question in the court. The constitution must clearly mention about the subject about which no question can be raised in the court. In the condition that when there is no provision in the Article 129 restricting from raising question in any court on

the acts carried out by the Election Commission, the provision of the Section 25 of the Electoral Rolls Act, 2006 that restricts from raising question in the court about the acts carried out by the Election Commission while preparing electoral rolls is apparently inconsistent with the Article 129 of the Interim Constitution of Nepal, 2007. Thus, the provisions of Section 11 (1), (2) and (3) of Electoral Rolls Act, 2063 except 'Citizenship Certificate' and the provision of Section 25 (A) and (B) of the same Act are inconsistent with the provisions of Preamble of the Interim Constitution of Nepal, Article 1, 2, 8, 9, 10, 11, 46, 63, 65 and 129 thereof. Therefore, it is requested to declare those provisions ipso facto null and void. The decision of the Election Commission dated 2067/7/16 (November 2, 2010) that has provided for registering the name of the persons who have not obtained citizenship certificate based of land registration certificate, educational certificate and recommendation of the local bodies, is inconsistent with the provisions of Preamble, Article 1, 2, 8, 9, 10, 11, 46, 63, 65 and 129 of the Interim Constitution of Nepal, 2007 and Section 5 (1) (A) of the Electoral Rolls Act, 2006 and therefore, it should be declared null and void through the order of certiorari. In addition to this, it is requested to issue the writ of mandamus in the name of respondent to include the name in the electoral roll only of Nepali citizens who have obtained Nepali citizenship certificate pursuant to Article 8(1) of the Interim Constitution of Nepal, 2007 or whom the concerned District Administration Office, the authentic body for issuing citizenship certificate has issued certificate recognizing him/her as qualified for obtaining citizenship certificate. If the decision of the Election Commission dated 2067/7/16 (November 2, 2010) is implemented, there will be no any difference between the persons who have obtained Nepali citizenship certificate and those who have not obtained it, which will seriously affect the nationality of the country, millions of non-Nepalese/foreigners will become voters which will create serious threat in the existence of the country and cause irreparable loss and the purpose of this writ petition will have no meaning. Therefore, it is requested to issue an interim order for not to implement or not to cause to implement the decision of the Election Commission dated 2067/7/16 (November 2, 2010). Since the issue includes the matter of Electoral Rolls which has national importance, it is requested to provide priority for the hearing of this writ petition.

The respondents shall be asked to submit written response. To consider about the request for issuance of interim order, the provisions of Article 2, 63(7) and 65(A) have provided the right to participate in the Election only to Nepalese citizens. Specially, Article 63(7) has provided the voting right only to

Nepali citizen by mentioning in the clear word that "For the purpose of the election to the Constituent Assembly, every citizen of Nepal shall be entitled to vote, as provided in law."

Since the act of obtaining Nepali citizenship is a legal process that goes on persistently and Electoral Roll is also continually collected, there is no legal restriction in including the name in the Electoral Roll after obtaining Nepali citizenship certificate.

There is no any objection in collection of Electoral Rolls by including the names of Nepali citizens from the provision of Section 5(A) of the Electoral Rolls Act, 2006 and there is legal provision for giving continuity to this process.

Whether or not the issue raised by the petitioner that the provision of the Section 11(1) of the Electoral Rolls Act, 2006 that "the name can be registered in the Electoral Rolls based on land ownership certificate or any identity card issued by a government office, local body, government owned organization or educational institute" is inconsistent with the preamble and Article 1, 2, 8, 9, 10, 46, 63, 65 and 129 of the Constitution is inconsistent with the constitution is constitutional is the issue to be considered at the final hearing of this writ petition. The condition has been raised that the issue which has been entered into this court has to be properly settled.

Right now, it has to be tested with the principle of irreparable loss and balance of convenience whether the process of collecting Electoral Rolls based on the documents other than citizenship as per the decision of the Election Commission dated 2067/7/16 (November 2, 2010) should be allowed to be continued. In the condition that the issue whether it will be legal to collect Electoral Rolls based on other alternatives except citizenship certificate is sub judice in this court, it is not proper to implement the provision which is under sub judice of this court based on the principles of balance of convenience and irreparable loss.

Therefore, an interim order has been hereby issued in the name of the respondent not to implement the decision of the Election Commission dated 2067/7/16 (November 2, 2010) to collect Electoral Rolls based on land ownership certificate or any identity card issued by a government office, local body, government owned organization or educational institute, until and unless the final settlement of this writ petition is made. Additionally, this issue of collection of Electoral Rolls which consists the nationally sensitive issue; therefore, this writ shall be presented for hearing providing priority. It is stated in the order of this court date 2067/8/9 (November 25, 2010).

Advocates Nur Mohammad and Brijesh Kumar Chaudhari in their joint petition/application filed

to this court have urged for their involvement in the hearing of this writ petition pursuant to Rules 42 of Supreme Court Rules 1992 stating that the writ petition consists the issue of public importance relating to right to voting and therefore, they also have concern on the issue.

Mithilesh Kumar Singh, Ratneswor Prasad Sharma, Sita Ram Agrawal, Narayan Jha, Raman Kumar Karna and Birendra Thakur in their joint petition filed to this court have urged for their involvement in the hearing of this writ petition pursuant to Rules 42 of Supreme Court Rules 1992 stating that the writ petition consists the issue of public importance relating to right to voting and therefore, they also have concern on the issue.

In their joint application filed by Advocate Kabita Pande on behalf of Women For Human Rights and Group of Single Women, Advocate Prakash Mani Sharma on behalf of Pro Public and Advocate Meera Dhungana on behalf of Forum for Women, Law and Development filed to this court have urged for their involvement in the hearing of this writ petition pursuant to Rules 42 of Supreme Court Rules 1992 stating that majority of Nepali women have been deprived from citizenship certificate because of gender discrimination prevailing in Nepali society. Further, as they urged, it has been clear from our social environment that there is less possibility of taking initiation from the family member for obtaining citizenship to the single women. If the Electoral Rolls Act and the decision of Election Commission is quashed as urged by the petitioner and state does not take any initiation for providing citizenship in easy manner to such excluded single women, such Nepali citizens will be deprived from voting rights. They also urged for distributing Nepali citizenship in simple and easy manner and free of cost to all the women who are eligible to acquire citizenship by deputing citizenship team pursuant to Article 11 of the Interim Constitution of Nepal, 2007 and issue the writ of mandamus not to collect and publish the Electoral Rolls unless and until the citizenship certificate is distributed in such method.

Advocate Mithilesh Kumar Singh on behalf of Madheshi Law Association has filed an application for quashing the interim order issued on 2067/8/9 (November 25, 2010) on the ground that the writ petition is apt to be quashed from the principle of laches. Since there is no condition of irreparable loss, the interim order dated 2067/8/9 (November 25, 2010) issued from the single bench based on ex parte hearing should quashed.

The Ministry of Law and Justice has stated in its written response that the subject of collection of Electoral Rolls falls under the domain of Election Commission and the Ministry has no any role in it; therefore, the writ filed by making the unconcerned

party as respondent should be quashed. Likewise, the petitioner has not made clear in the petition why the provision of Section 11(1) is inconsistent with the constitution and therefore the petition is not reasonable and should be quashed.

The program of collecting Electoral Rolls containing image has been launched as per the decision of the Commission dated 2067/4/24 (August 9, 2010). While collecting Electoral Rolls local peoples and political parties obstructed the work stating that the citizens who have not already obtained citizenship certificate would be deprived from voting rights if the Electoral Roll is collected based only on citizenship certificate. Therefore, the program has to be cancelled in some municipalities and writ petition has also been filed at this court urging for inclusion of the name of the people who have not obtained citizenship certificate in the Electoral Rolls pursuant to the provision of Section 11 of the Electoral Rolls Act, 2006. Taking into consideration of such condition, from the meeting of the Commission dated 2067/7/16 (November 2, 2010), it has been decided to include the name in the Electoral Rolls containing image of the people who are eligible for being voters but have not obtained citizenship certificate, based on land registration certificate, academic certificate and recommendation of the local bodies that clarifies the place of birth, permanent address, date of birth, age and name of father or mother and in case of failure to submit such evidence it shall be registered if the concerned V. D. C or concerned ward office of Municipality makes recommendation for registering the name in prescribed format pursuant to Section 11(2) of the Electoral Rolls Act, 2006 specifying the place of birth, permanent address, age, and name of father or mother. While making that decision too, it has not been intended to register the name of non-citizen as mentioned in the writ petition however; it was intended that people eligible for voting and genuine Nepalese citizens should not be deprived from voting rights as per the spirit of the constitution and the provision of Electoral Rolls Act, 2006. For making the election fairer and more credible the campaign of collecting Electoral Rolls containing image and thumb impression has been carried out utilizing modern technology. While carrying out this act it has been carried out primarily based on Citizenship certificate, however, taking into account of the existing laws including the provisions of the Section 11 of Electoral Rolls Act, 2006, the Commission has decided to collect the Electoral Rolls containing image and thumb impression based on the grounds in addition to the citizenship certificate making some elaboration of the earlier decision. Since this decision is lawful, the writ petition should be quashed. It is stated

in the written response submitted by the Election Commission.

While making petition to have any law or any part thereof declared void on the ground of inconsistency with this Constitution pursuant to Article 107(1), the petitioner has to make petition clearly specifying the reason how the impugned law is inconsistent with the constitution supplying evidence of such inconsistency for the satisfaction of the court. The burden of proof lies with the party who makes the claim of inconsistency of any law with the constitution. In this writ petition, the petitioner has claimed that the provisions of Sections 11 (2), (3) and 25 (A) and (B) Electoral Rolls Act, 2006 are inconsistent with the constitution however, he has failed to submit evidence substantiating that claim. Therefore, there exists no condition for issuance of the writ. If only the name of the people who have obtained Nepali Citizenship certificate is registered in the Electoral Rolls and the names of the people who have not obtained the citizenship certificate but are qualified for obtaining citizenship certificate pursuant to part 2 of the constitution and Citizenship Act, 2006 is not included in the Electoral Rolls, such an act goes against the right to equality guaranteed by the Article 13 of the constitution. Therefore, the writ petition should be quashed. It is stated in the written response submitted by the Office of the Prime Minister and Council of Ministers.

The Provisions of Section 11(1), (2), (3) and Section 25 of the Electoral Rolls Act do not make the non citizens of Nepal a voter. Section 5 of the same Act has made clear what types of person can become voters. Therefore, the claim that it has been tried to make non-citizens as voter does not seem reasonable. The writ petition should be quashed. It is stated in the written response submitted by the Ministry of Home Affairs.

This writ petition presented before the bench as per the rule for hearing of whether or not the interim order should be quashed, the writ deserves full hearing since the written responses have already been submitted from all the respondents.

The summary of the arguments made by the learned Senior Advocates Mr. Sindhu Nath Pakuryal, Bishwo Kanta Mainali, Shambhu Thapa and learned advocates Sher Bahadur K.C, Borna Bahadur Karki, Dr. Mr. Bhimarjun Acharya, Mr. Tika Ram Bhattarai, Mr. Chandra Kanta Gyawali, Mr. Madhav Kumar Basnet, Mr. Ravi Narayan Khanal, Mr. Rishi Ram Ghimire, Mr. Tulsi Bhatta, Mr. Tara Prasad Lamichhane, Mr. Padam Rokka, Mr. Dinesh Raj Satyal and Mr. Subash Acharya representing the writ petitioner is as follows:

Although both the persons who have acquired the citizenship of Nepal and who are eligible to acquire

the citizenship are citizens of Nepal as provided by the Article 8 of the Interim Constitution of Nepal, 2007, however; the provision of that Article does not mean that none has to obtain citizenship certificate hereinafter. Such a narrow interpretation should not be made. The citizenship certificate is the proof of the fact that a person is a citizen. Therefore, the person who intends to exercise political and civil rights has to obtain citizenship certificate. If a person is genuinely a citizen and is conscious about his/her civil and political rights, there can be no justification for being indifference toward obtaining citizenship certificate. The age for obtaining citizenship certificate has been fixed as 16 years however, the age for exercising voting right has been designated at 18 years. From this context, it is an inherent objective that only after obtaining the citizenship certificate; one can exercise the political rights such as to vote and to stand as a candidate in elections. If there was extreme complication in obtaining citizenship certificate or there was discrimination in its distribution, it would be a cause of the problem. However, there is no such state of affairs in Nepal. The State is distributing citizenship certificates by outreaching to the people's doors.

In the absence of a citizen's relationship with the concerned nation, no political or civil rights of a person may emanate. Hence, documents such as those issued from the school cannot be a substituted of the citizenship certificates. If the citizenship could be substantiated from the documents like land ownership certificate, there would be no relevancy of a separate legal provision for issuing the citizenship certificate. The citizenship certificate is the only substitute to a citizenship certificate. The provision of Article 8 of the Interim Constitution of Nepal, 2007 cannot be construed as having allowed a person to vote and to stand as a candidate without having acquired a citizenship certificate. Article 65 of the Constitution and Section 5 of the Electoral Rolls Act, 2006 both require the Nepali citizenship in their respective contexts. At this premise, the legal provision that does not require citizenship certificate for registering name in the electoral rolls is unconstitutional in itself.

The law has conferred the right to District Administration Office for issuing citizenship certificate after due verification of whether the applicant is a citizen or not. Any other legal provision that would confirm someone as a Nepali citizen is paradoxical in itself and it is also evident that this has been brought to inactivate the existing legal provisions. As such, the other provisions excluding citizenship certificate in Section 11(1), (2), (3) of Electoral Rolls Act, 2006 have to be declared unconstitutional. The Constitution has not provided immunity to the Election Commission against judicial review of its acts. Even the Commission has

to function within the purview of Constitution and statutes. In case the Commission is to be viewed above the law and Constitution, then it would be useless to say that Constitutionalism and rule of law prevails in Nepal. As such, the prohibition imposed by Section 25 of the Electoral Rolls Act, 2006 that the actions carried out by the Election Commission as regard to the collection of Electoral Rolls are shall not be the subject of judicial review also seems to be unconstitutional. Therefore, the provisions of Section 11(1), (2), (3) of Electoral Rolls Act, 2006 enabling the registration of names into the Electoral Rolls also on the basis of land ownership certificate, etc. apart from citizenship certificate as well as the provision of Section 25 of the same Act is inconsistent with the Constitution, therefore, an order has to be issued as requested by the petitioner.

The synopsis of arguments furnished by learned Joint Government Attorney Mr. Yuba Raj Subedi on behalf of the respondent Government of Nepal and learned Deputy Government Attorney Mr. Bharat Mani Khanal representing the Election Commission is as follows:

Article 8 of the Interim Constitution of Nepal, 2007 has provided that the persons eligible to acquire Nepali citizenship certificate shall also be the Citizen Nepal. Hence, the legislature has made the provision of Section 11 of the Electoral Rolls Act, 2006 to ensure the right to vote even to the Nepali citizens who have not yet obtained citizenship certificates. Therefore, this provision cannot be termed as being inconsistent with the Constitution. The provision of Section 11 has neither denied nor disregarded the importance of citizenship certificate. That legal provision made for enabling to ask for corroborating evidence like land ownership certificate for the purpose of including the name in the Electoral Rolls of the person who has not obtained citizenship certificate after making verification of whether a concerned person is eligible for obtaining citizenship certificate is constitutional. The restriction imposed by Section 25 of the Electoral Rolls Act, 2006 that no question may be raised in any court as regards the Electoral Rolls prepared by the Election Commission is also not inconsistent with the Interim Constitution of Nepal, 2007. This fact has been settled by the Special Bench in the writ petition (2067-WS-0019) involving writ petitioner Sunil Ranjan Singh Vs Election Commission. Hence, the provision except the 'citizenship certificate' of Section 11(1) of Electoral Rolls Act, 2006, the provisions of Section 11 (2,3) and 25 of the same Act are not inconsistent with the Constitution and since the decision of Election Commission on 2nd November, 2010 are Constitutional in themselves, therefore, the writ petition has to be quashed.

The synopsis of the argument presented by learned advocates Mr. Ratneshwor Prasad Sharma, Mr. Mithilesh Kumar Singh, Mr. Sita Ram Agrawal, Mr. Jagannath Mahato Singh, Mr. Raman Kumar Karna and Mr. Pankaj Kumar Karna on behalf of the concerned party Madhesi Lawyer's Association obtaining the permission of the Court pursuant to the Rule 42(2) of the Supreme Court Rules, 1992, is as follows:

Section 5 of the Electoral Rolls Act, 2006, while determining the qualification of a voter has required that he or she should be a Nepali citizen. It has not mandatorily sought for Nepali citizenship certificate. As this provision of Act is consistent with the letter and spirit of Article 8 of the Interim Constitution of Nepal, 2007, the overall arrangement of Section 11 of the Electoral Rolls Act, 2006 is Constitutional. A citizen is a citizen whether or not he/she has obtained citizenship certificate. The State and all citizens have to be aware that an alien or foreigner should not participate in the electoral process of Nepal. However, denying someone from the right to vote only on the ground that he/she has not obtained citizenship certificate shall be contrary to the Constitution. Nobody can dispute the fact that a foreigner should be allowed to vote. But everyone has to be sensitive enough on the fact that a genuine Nepali citizen should not be deprived from the right to vote. Section 11 of the Electoral Rolls Act, 2006 has not overlooked the significance of a citizenship certificate. It has only ensured the voting rights of those who are yet to obtain citizenship certificates by verifying them through alternative evidence. As such the provision of Section 11 of the Electoral Rolls Act, 2006, which has permitted for admissibility of proof such as land ownership certificate and recommendation of local bodies for the purpose of registering the name in the Electoral Roll after duly verifying that he or she is a Nepali citizen, is Constitutional. This writ has been filed without sufficient study the Constitution and relevant laws. It has also been claimed that the provision of Act inconsistent with Article 46 of the Interim Constitution which has already been repealed by 5th amendment to the Constitution. The writ petition has failed to categorically state which provision of the Act has been inconsistent with the constitution. The Court cannot conduct judicial review of the Act on the basis of an ambiguous claim made without a specification that the provision of Act is inconsistent with the Preamble, and Articles 1,2,8,9,10,63,65 and 129. Hence, the writ petition has to be quashed.

After obtaining permission of the Court as per Rule 42(2) of the Supreme Court Rules, 1992, the concerned parties and learned advocates Mr. Prakash Mani Sharma and Ms. Kabita Pandey

representing Pro Public and Single Women's Group for Human Rights also pleaded before the Court, synopsis of which is as follows:

The concept of citizenship has to be taken in twofold idea that is- citizenship as a status and citizenship as a right. Article 8 of the Interim Constitution of Nepal, 2007 relates with citizenship as a status whereas the matters of Chapter 3 and Article 65 pertain to citizenship as a right. In order to ensure the enjoyment of rights under Chapter 3 and Article 65, it is expedient that the State should fulfill its task of distributing citizenship certificates by also deputing citizenship certificate distribution teams regularly pursuant to the Article 11. Due to the gender discrimination and backwardness prevalent in Nepali society, women and single women in particular are facing difficulties in obtaining citizenship certificates. This fact has to be taken into account. Due to the troubles involved in the process of obtaining citizenship certificates, they should not be deprived from exercising their civil right of voting.

Upon listening to the said arguments and to consider about the judgment, the following issues have to be settled in relation to the writ petition:

- 1) Whether the provision except 'citizenship certificate' stipulated in Section 11(1) of the Electoral Rolls Act, 2006, provisions underlying in the sub sections 2 and 3 of the same Section and the provision of Section 25 of the said Act are inconsistent with the Preamble, and Articles 1,2,8,9,10,63,65 and 129 of the Interim Constitution of Nepal, 2007 or not?
- 2) Whether the decision of respondent Election Commission on 2nd November, 2010 as regards the collection of Electoral Rolls is inconsistent with the above provisions of the Interim Constitution of Nepal, 2007 as well as those of Section 5(1) (A) of the Electoral Rolls Act, 2006 or not?
- 3) Whether an order as sought by the petitioner needs to be issued or not?
2. To consider about the first question, the main demand of the petitioner is that: The respondent Election Commission on 2nd November, 2010 has decided in course of collecting Electoral Roll containing photographs, names in that Electoral Rolls may be registered on the basis of land ownership certificate, identity cards issued by government offices, local bodies, government owned corporations and educational institutions, and recommendations of the Village Development Committees and Municipalities, apart from the citizenship certificate as per Section 11 (1,2) of the Electoral Rolls Act, 2006. As the provisions except the 'citizenship certificate' stipulated in

Section 11(1) of the Electoral Rolls Act, 2006, all the provisions underlying in the sub sections 2 and 3 of the same Section and the provision of Section 25 of the said Act are inconsistent with the Preamble, and Articles 1,2,8,9,10,63,65 and 129 of the Interim Constitution of Nepal, 2007, and therefore urged for declaring null and void ab initio and as the decision of respondent Election Commission on 2nd November, 2010 as regards the collection of Electoral Rolls is also inconsistent with the above mentioned provisions of the Interim Constitution of Nepal, 2007 as well as those of Section 5(1) (A) of the Electoral Rolls Act, 2006, urged for voiding those provision through an order of certiorari. In this regard, at first it is expedient to examine the Section 11 of the Electoral Rolls Act, 2006. The Section 11 of the Electoral Rolls Act, 2006 provides that:

Section 11: Seeking Evidence for Registration of Name:

- (1) *Where it is so required, while registering the name of a person in the Electoral Rolls pursuant to this Act, the Enrollment Officer may ask the concerned person or his or her family to submit the citizenship certificate, land ownership certificate or any identity card issued by a government office, local body, government owned organization or educational institute, setting out his or her date of birth or age or place of his or her residence.*
- (2) *In the event of failure to submit the evidence sought pursuant to Sub-section (1), the Enrollment Officer may ask such person to submit a recommendation of the concerned Ward of the concerned Village Development Committee or Municipality.*
- (3) *The name of a person who fails to submit the recommendation referred to in Sub-section (2) shall not be registered in the Electoral Rolls.*

Provided that, nothing shall be deemed to bar the registering of the name of a citizen of Nepal in the Electoral Rolls merely by the reason of his or her failure to submit the Nepalese citizenship certificate.

Article 65 of the Interim Constitution of Nepal, 2007 has determined the qualification of the member of Constituent Assembly. In the Clause (a) of that Article lays down that one has to be a Nepali citizen to become a member of Constituent Assembly. Likewise, Section 5(1) (A) of the Electoral Rolls Act, 2006 has fixed a criteria that only a Nepali citizen shall have the right vote. Section 11(1)

of the Electoral Rolls Act, 2006 has stipulated that the following documents apart from the citizenship certificate may be considered or sought for the registration of names in the voters' roll if required:

- a) *Land ownership certificate or*
- b) *Identity cards issued by government offices, local bodies, government owned corporations and educational institutions.*

3. Similarly, Section 11(2) provides that in case one cannot submit the above particulars, names may be registered in the Electoral Rolls also upon the recommendation of the Village Development Committee or the concerned Ward of the Municipality. Moreover, the proviso to the Sub-section (3) has categorically mentioned that the names may be registered in the Electoral Rolls even if someone fails to submit his or her citizenship certificate. Only the citizens are entitled to the right to vote and the right to contest as a candidate in the election of Constituent Assembly, Parliament and local bodies. Even if someone has been domiciled in Nepal for long, the proof of his/her identification as a Nepali citizen is the citizenship certificate itself. The right to vote and the right to contest as a candidate in the election of Constituent Assembly, Parliament and local bodies both are political rights in nature. Political rights are provided only to citizens of a country. In this context, it is worthwhile to mention the main provision of Article 25 and its Clauses (a) and (b) of the ICCPR, 1966 to which Nepal is a party and which applies as good as the law of Nepal:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a) *To take part in the conduct of public affairs, directly or through freely chosen representatives;*
- (b) *To vote and to be elected at genuine periodic elections, this shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.*

Article 25 of the ICCPR is an article to exercises political right. It is an evident provision that the political right mentioned in that article is conferred only to the citizens.

4. Now while considering the subject of the issues espoused in the present writ petition, the issue is that for becoming the member of Constituent Assembly, a person must be certified as Nepali citizen by obtaining

Nepali citizenship certificate. Article 65(a) of the Interim Constitution of Nepal, 2007 lays down that one has to be a Nepali citizen to become a member of Constituent Assembly. Nepali citizen refers to the Nepali citizen who has met the qualifications prescribed in Chapter 2 of the Constitution. Chapter 2 has laid down the criteria of eligibility for being a Nepali citizen. One who has acquired the qualifications of Chapter 2 is also qualified to become a Nepali citizen. In other words, the proof of being a Nepali citizen is the person who has obtained certificate as per the Nepal Citizenship Act, 2006 which is framed for the purpose of Chapter 2 of the Constitution and the Schedule of the rules framed thereunder.

5. Out of the 5 qualifications set forth in the Article 65 for becoming a member of Constituent Assembly; (a) requires that the first qualification is that one has to be a Nepali citizen. This infers that though a person may have domiciled in Nepal for a long time and his or her lex domicil may be Nepal, he or she cannot stand as a candidate for the member of the Constituent Assembly in case he or she has not obtained the citizenship certificate duly issued by the official authorized by law. Only a person who has obtained Nepali citizenship certificate shall be eligible to for becoming a candidate and voter. Article 63 provides for the constitution of Constituent Assembly. The Constituent Assembly constituted pursuant to the Article 63 shall draft a Constitution as well as act as a legislature parliament. Pursuant to Articles 38 and 39, the members of Constituent Assembly form a council of ministers which exercises the executive power pursuant to Article 37. The Constituent Assembly also formulates laws in the capacity of legislature, approves the budget, conducts confirmation hearing of the appointees to the Constitutional bodies pursuant to Article 155 as well as ratifies the treaties or agreements to which Government of Nepal is a party, pursuant to Article 156. Any State can grant these exclusive political rights only to its citizens. There is remarkable difference between a resident and a citizen. A citizen has an allegiance towards his or her nation which is characterized by the oath he or she takes while obtaining citizenship. However, a person qualified to obtain a citizenship but has not obtained it does not take such an oath of allegiance. For this very reason, Article 25 (a) (b) (c) of the ICCPR has laid down that one has to be a citizen first to enjoy the rights of political nature.

6. Not only the ICCPR but the Declaration on Criteria for Free and Fair Election adopted by the 154th session of Inter Parliamentary Council (IPC) held in Paris on 26th March, 1994 also has laid down that one has to be a citizen first to participate or contend in periodic elections are to be directly appointed in public posts. This Declaration has further postulated that a sustainable and strong government can only be formed through a free and fair election and that government alone can represent the entire citizenry. It has also specified that a person has to be a citizen first to participate or contend in elections as per the following criteria:

2. Voting and Elections Rights

- (1) *Every adult citizen has the right to vote in elections, on a non-discriminatory basis.*
- (2) *Every adult citizen has the right to access to an effective, impartial and non-discriminatory procedure for the registration of voters.*
- (3) *No eligible citizen shall be denied the right to vote or disqualified from registration as a voter, otherwise than in accordance with objectively verifiable criteria prescribed by law, and provided that such measures are consistent with the State's obligations under international law.*
- (4) *Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.*
- (5) *Every voter has the right to equal and effective access to a polling station in order to exercise his or her right to vote.*
- (6) *Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others.*
- (7) *The right to vote in secret is absolute and shall not be restricted in any manner whatsoever.*

The above Declaration of Inter Parliamentary Council (I.P.C.) has adopted the resolution permitting only to the citizen of a State to exercise political rights of that country. Other Regional Human Rights Instruments such as Article 13:1 of the African Charter on Human and People's Rights has also prescribed citizenship as the first prerequisite to exercise political rights in the following criteria:

Article 13

1. *Every citizen shall have the right to participate freely in the government of his*

country, either directly or through freely chosen representatives in accordance with the provisions of the law.

2. *Every citizen shall have the right of equal access to the public service of his country.*
3. *Every individual shall have the right of access to public property and services in strict equality of all persons before the law.*

Article 23 of the American Convention on Human Rights also has stipulated a criterion that in order to vote and participate in the elections, one should be a citizen at first.

Article 23: Right to Participate in Government

1. *Every citizen shall enjoy the following rights and opportunities:*
 - a. *to take part in the conduct of public affairs, directly or through freely chosen representatives;*
 - b. *to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and*
 - c. *to have access, under general conditions of equality, to the public service of his country.*
2. *The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.*

Thus, the international conventions pertaining to human rights such as the ICCPR and the regional instruments too have conferred the right to vote and stand in elections of a sovereign State to its nationals only.

7. Free and fair periodic elections are essential for democracy. The protection of fundamental liberties of citizens is possible only under the competitive democratic system and rule of law. Government of any country to be owned by the people as their own government and also for the legitimacy of the government a secret, periodic, free and fair election is expedient. Especially in a parliamentary system, a legislative formed on the basis of free and fair elections through secret ballot and the government constituted from that legislature shall be accountable to both the electorate and the legislature. Only such government has a representative character. Taking into account of these matters, in order to enable the Government of Nepal to acquire a representative character, provision

of constituting a legislature through free and fair elections has been enshrined. Thus, Article 65(a) of the Interim Constitution of Nepal, 2007 has laid down that one has to be a Nepali citizen to become a member of Constituent Assembly so that the people may own the government formed after the constitution of the legislature through such elections.

Apart from the above ICCPR and provision adopted by the 154th session of Inter Parliamentary Council (I.P.C.), it is expedient to observe the provisions made by other Regional Instruments as well.

In this sense the Copenhagen Document which is endorsed by the Conference on Security and Cooperation in Europe (Document of the Copenhagen Meeting of the Conference on the Human Dimension of 29th June, 1990) is worthy to be mentioned. The 9 point declaration ratified by CSCE countries has also adopted a significant point to the effect that only a citizen shall occupy a political or public office. The 5th point of this Declaration reads:

Respect to the right of citizens to seek political or public office individually or as representatives of political parties or organizations without discrimination. A book written by Guy S. Goodwill and published by Inter Parliamentary Union by the name of Free and Fair Elections: International Law and Practice has also elaborated in which countries election is compulsory. In this course, it reads that: *Formal Constitutional or statutory recognition of the citizen's right to vote is common to most States and plays both a substantive and confidence building role: a few countries make voting compulsory, with respect to parliamentary elections, most States lay down citizenship age and residency requirements.*

8. Not only citizenship but residency or permanent domicile also matters necessarily in a parliamentary election. It is so because despite being a citizen, if one has been staying abroad for a long time would not have acquainted with the needs of nation, aspiration of people and latest developments of the country. In case of been staying abroad for long, he or she cannot represent in a true sense. Hence, not only citizenship but residency also is required. In the Human Rights 363 Application 7566/76 Decisions and Reports of Sieghart, the European Commission on Human Rights has added the requirement of residency apart from citizenship.

Art. 8 b(2), Article F, Title 1, Chapter 2 of the Maastricht Treaty reads: *European Citizen is also entitled to vote and stand as candidate for*

the European Parliament in his or her member State country of residence.

Section 3 of the Charter of Rights and Freedoms, Canada also has granted voting rights exclusively for its own citizens.

9. In United States of America, for becoming a candidate of the legislature, exercising voting, holding a public office and becoming a member of jury one must be a citizen. Non citizens cannot exercise these rights. In America a citizen has to pay taxes as per his or her income and has to comply with the Acts and laws. In America the right to voting is regarded as the greatest right of citizens. Even the non-citizens/foreigners may apply for naturalized citizenship of the United States after fulfilling statutory requirements. Once the application is approved and all the procedures are met, he or she is made to take an oath of allegiance after which one shall become a naturalized citizen of US. Then the citizenship of US is issued and only afterwards he or she is allowed to cast vote, stand in polls, be appointed in public office and to participate in the process of formation of government.
10. Upon observing the legal provisions of the various States and of the Regional Instruments it has been obvious that Civil and Political rights are entrusted only to the citizens. In the absence of the citizenship certificate that identifies someone as a citizen; voting rights cannot be granted from any of other documents that would otherwise establish that a particular person has been residing at a specific country for a long time. That residential certificate or the qualification to obtain citizenship certificate cannot substitute or replace the citizenship certificate. Only the citizenry is endowed with the exercise of civil and political rights. A citizenship certificate is essential to exercise such privileges.
11. Citizens of any country enjoy the civil and political rights but aliens cannot enjoy such rights. Likewise, there is difference between a national and a citizen. A national may not be ipso facto a citizen but a citizen is invariably a national. Hyde in the 2nd edition of International Law writes that: It follows that all the nationals of a State are not its citizens though all aliens of a State must be its nationals. According to British Nationality Act, 1981, the citizens of any territory under the colony or protectorate of Britain are its nationals. However, they are not deemed to be the British nationals who exercise political rights. Looking at the American context, the United States Nationality Act has mentioned

the term national but it has not treated nationals as its citizens. The US Constitution also has only referred the citizens. The United States Immigration and Naturalization Act, 1952 has regarded the residents of places like Samoa which are not included in the union as the American nationals but does not regard them as its citizens. Even in Nepal, there may be persons who might have stayed for a long period in Nepal and may have attained a certificate that would identify him as a Nepali citizen being issued by government offices, local bodies, government owned corporations and educational institutions, and recommendations of the Village Development Committees and Municipalities that someone is a Nepali citizen. Such person may be the national of Nepal but not its bona fide citizens as per Chapter 2 of the Interim Constitution of Nepal, 2007 and Nepal Citizenship Act, 2006.

12. The Constitution is the fundamental law of the land. Nepal has a written Constitution and Article 1 of the Constitution proclaims that the Constitution is the fundamental law of the land and the law inconsistent with it shall be void to the extent of its inconsistency and therefore, Nepal is a country that has Constitutional supremacy. Pursuant to Article 1, the Constitution is the fundamental law of the land and the law inconsistent with it shall be void to the extent of its inconsistency and Article 107(1) has entrusted this Court with the extraordinary jurisdiction to declare any law void that is inconsistent with the Constitution. This implies that though the legislature is sovereign to legislate any laws, it has to make law without violating constitution or same without contravening with the Constitution. In case any law is inconsistent with the Constitution, this Court reserves the power pursuant to the Article 107(1) of the Interim Constitution to declare such law null and void by exercising its extraordinary jurisdiction.
13. The legislature parliament of Nepal is sovereign. However, since it is a creature of Interim Constitution of Nepal, 2007, it cannot formulate laws against its creator, or contradicting with the Constitution itself. Stating in Constitutional terms, the legislature-parliament is sovereign and supreme in framing laws. However, due to the provision of Article 1 of the Constitution, Nepal has Constitutional supremacy rather than parliamentary supremacy. Therefore, legislature parliament may formulate legislation subject to the limitations of Constitution. In case any law framed by the legislature parliament is inconsistent with the Constitution, then this

Court may strike down such law to the extent of such inconsistency. To look in this premise, there is an evident provision in Article 65(a) of the Interim Constitution that a person has to be a Nepali citizen first to become a member of Constituent Assembly. Therefore, the provisions enshrined in Section 11(1) and (2) of the Electoral Rolls Act, 2006 that 'land ownership certificate, identity cards issued by government offices, local bodies, government owned corporations and educational institutions, and recommendations of the Village Development Committees and Municipalities may be acceptable 'used after the 'citizenship certificate' has to be maintained that the legislature has framed law by exceeding its jurisdiction. The other documentary evidence cannot substitute the citizenship certificates. Hence, that provision does not seem to be consistent with the provisions of Article 65(a) and Section 5(1) (A) of the Electoral Rolls Act, 2006. It is also found to be inconsistent with the provisions of Article 25 of the ICCPR.

14. In Article 63 of the Interim Constitution of Nepal, 2007 it is provided a Constituent Assembly shall be constituted for the making of a new constitution. After the commencement of the Interim Constitution, a Constituent Assembly has been constituted and the process of Constitution drafting has already begun. Pursuant to the provisions of Article 63(7), the members to the CA have been elected by the Nepali citizens, who have completed 18 years of age by the 15th December, 2006. The duration of CA constituted pursuant to Article 63(1) is specified in Article 64. Article 82 holds that the function of CA shall terminate from the day the Constitution approved by it is brought into commencement.
15. The CA constituted pursuant to Article 63 is not a legislature that would be constituted in every 4 or 5 years that gets continuity. The Constituent Assembly is constituted only for drafting a republican Constitution of a democratic federal structure so as to translate the popular movement of 2006 into reality. The Constitution shall be written within the duration stipulated in Article 64 and the function of CA shall terminate from the day the Constitution approved by it comes commencement, as laid down by Article 82. Moreover, the Interim Constitution lacks a provision for another election for the Constituent Assembly and the election of Constituent Assembly has already been conducted. Therefore, the provisions of Electoral Rolls Act, 2006 may be incongruent

to the Article 65(a) of the Interim Constitution, to nullify those provisions by invoking Article 107(1) as requested by the petitioner shall be tantamount to entertaining a moot case. The Court does not exercise its extraordinary jurisdiction pursuant to Article 107(1) in an assumed potential invasion of a right. In order to exercise the jurisdiction under the Article 107 (1), there has to be an actual and threatened invasion of right. In the context of the Constituent Assembly, such situation has already passed away. The Article 107(1) shall not be used since the circumstance has already been changed after the conduction of election and constitution of the Constituent Assembly and the potential dispute has already ceased to exist. The US Supreme Court, in the case of *Doremus Vs Board of Education* (1952) 342 US 429 has held that the court shall not intervene if the issue has been dead owing to change in the status. In *Mills Vs Green* (1895) 159 US 561, the US Supreme Court has held that *no intervention may be made if the issue has been dead*.

16. As the Constituent Assembly has already been constituted and there is no provision for the constitution of another Constituent Assembly, the matter of Election to members of Constituent Assembly pursuant to Article 65(a) has turned out to be a dead issue now. Therefore, the terms applied in Section 11 of the Electoral Rolls Act, 2006 need not be declared void as sought by the petitioner in the present conditions for the purpose of elections to Constituent Assembly.
17. On the basis of the provisions of Section 11(1) and (2) of the Electoral Rolls Act, 2006 of which the petitioner has requested for declaring null and void, in case it is assumed that there may be a possibility that persons other than the citizens register their names in the Electoral Roll and even a non-Nepali citizen may also cast vote or become a lawmaker, then one has to also maintain that there is no arrangement in the Interim Constitution for a separate election of the legislature parliament or the parliament. Because of this reason this Constitution is the interim constitution and a new Constitution shall come into effect only after the Constituent Assembly frames a new constitution passes it. After the drafting of new constitution, the new constitution shall be commenced and the legislature constituted according to new Constitution and the law relating to Electoral Rolls and Election made by such legislature will have to be considered by comparing with the new Constitution. Hence, as the new Constitution shall be brought

into commencement after drafting of the constitution by the Constituent Assembly, as there is no provision of a separate parliament and its possibility, its work is being carried out by the Constituent Assembly itself, the Court need not intervene in this matter.

18. However, the function of Election Commission to collect Electoral Rolls is a continuous process. The roll collected today may be used in any level of the elections to be held under this Interim Constitution or a new Constitution. The preamble of the Electoral Rolls Act, 2006 clarifies this phenomenon. Although the election to Constituent Assembly has already conducted, the overall purpose of the Act for the elections to be held under the new Constitution, except the election of Constituent Assembly has not extinguished yet. Therefore, it will be expedient to address some of the issues raised by the petitioner over the Constitutionality of the Act.
19. The main plead of the petitioner is that names in the Electoral Roll cannot be registered and candidacy cannot be filed without obtaining the citizenship certificate as the Constitution and laws provide that no one can register his/her name in the Electoral Rolls and become candidate in the election without obtaining citizenship certificate. However, the written response of the respondents and the plead of the interveners is that Article 8 of the Interim Constitution has deemed those people also as Nepali citizens who are eligible of obtaining Nepali citizenship certificates but have not obtained it yet. Therefore, names in the Electoral Rolls may be included, without obtaining citizenship certificate, on the basis of identity cards issued by government offices, local bodies, government owned corporations and educational institutions, and recommendations of the Village Development Committees and Municipalities that substantiate someone as a Nepali citizen. In this context, it is worthwhile to analyze first the Constitutional provision regarding citizenship. The provision in Article 8(1) of the Interim Constitution of Nepal, 2007 regarding the citizenship at the time of commencement of this Constitution is as follows:
Article 8: Citizenship at the Commencement of the Constitution:
(1) At the commencement of this Constitution, the persons who have acquired the citizenship of Nepal and who are eligible to acquire the citizenship by virtue of this Part shall be the citizens of Nepal.
20. Once a citizenship certificate is acquired as

per the law that only proves that the person is a Nepali citizen. Moreover, in the event that the Constitution stipulates qualification for citizenship and someone attains that qualification there would be the problem of identification and therefore, he/she has to obtain citizenship certificate so as to identify himself. Even if a person is qualified for becoming a citizen, it does not mean that the citizens need not obtain citizenship certificates for the purpose of voting and becoming candidates in elections. In democratic system the state cannot compel anyone to do some act. In other words, though the State may not compel everyone to obtain citizenship certificates still, if anyone wishes to exercise his or her political right through voting right in the capacity of a Nepali citizen, then he or she has to obtain citizenship certificate so as to introduce himself.

Therefore, it cannot be agreed with the pleas of the learned advocates representing the respondents and intervener that the obtaining or not obtaining of a citizenship certificate does not make substantive effect in including names in the Electoral Roll. Thus, there is no debate on the fact that the essence of qualification of Nepali citizenship set forth in Article 65(a) of the Interim Constitution of Nepal, 2007 and Section 5(1) (a) of the Electoral Rolls Act, 2006 invariably refers to a Nepali citizen who has obtained citizenship certificate.

21. It has been already discussed above that whether the provisions “land ownership certificate or any identity card issued by a government office, local body, government owned organization or educational institution of the Section 11 (1) of the Electoral Rolls Act, 2006, except the term “citizenship certificate” and the provision “recommendation of Village Development Committee or Municipality” of the clause (2) of the same section are inconsistent with the Article 65(A) of the Constitution. However, while interpreting the constitution and law, harmonious construction has to be made to it for giving sense to the true intention of the legislature. While examining the constitutionality of any law, it has to be presumed that the law is consistent with the constitution. It is a recognized principle that a law has to be declared ultra vires only if it clearly crosses the limits set by the constitution.
22. It has already been discussed above that the claim made in this writ petition in regard to the Article 65(A) is moot because the election of the Constituent Assembly has already conducted

and therefore this need not be repeated here. The Section 11 (1) and (2) of the Electoral Rolls Act, 2006 which have been challenged by the petitioner needs to be examined/considered in relation to the articles 8 (1) and 65(A) and Section 5(1) (A) of the Electoral Rolls Act, 2006.

23. In Section 5(1) (A) of the Electoral Rolls Act, 2006, it has been provided that a person has to be a Nepalese citizen for being eligible for casting vote. It has already been interpreted above that the term “Nepali Citizen” means “the person who has obtained Nepali citizenship certificate”. If any legal provision gives otherwise meaning, disregards it or restricts or controls the meaning of the above mentioned provision of the 5(1)(A) or the provision that a person has to obtain citizenship certificate for being registered as a voter is against the constitution and thus against the Article 8(1) and 65(A) and is hence unconstitutional. Viewing from this point of view, to make the provisions like “land ownership certificate”, “identity card issued by a government office, local body, government owned organization or educational institution” and “recommendation of Village Development Committee or Municipality” in the Act and gives equal status to these documents to that of citizenship certificate is to be maintained that the legislature has exercised the power beyond the limit. Since the term “citizenship certificate” used in Sub-section (1) is clear in itself and therefore, the legislature cannot add the other documents substituting the citizenship certificate. It has to be understood as maintaining the necessity of citizenship certificate for the registration of name in the Electoral Rolls, the Enrollment Officer may ask for submitting the documents mentioned in Sub-section (1) and (2) including land ownership certificate for corroboration and verification of the citizenship certificate if citizenship certificate seems unclear or confusing.
24. The petitioner in his writ petition has claimed that the provision of Section 25 of the Electoral Rolls Act, 2006 is inconsistent with the different Articles of the Constitution. The provision of the Section 25 is as follows:

Section 25. Not to raise question in court: No question may be raised in any court about the following matters:

 - (a) *As to whether or not the name of any person has been registered in, or may or may not be registered in, the Electoral Rolls of any election constituency;*
 - (b) *As to the preparation of the Electoral*

Rolls by the enrollment Officer or the authorized person deputed by him or her or the alteration made by the concerned Official in the Electoral Rolls pursuant to this Chapter.

25. The question that the provision of Section 25 of the Electoral Rolls Act, 2006 is inconsistent with the Article 129 and 107 (2) of the Interim Constitution of Nepal, 2007 had been raised in the Writ Petition of 067-WS-0019, Sunil Ranjan Singh v. Election Commission urging for declaring it void. In that writ petition, the Special Bench of this Court in its order dated 2067/9/8 (December 23, 2010) has interpreted as follows:

“To consider whether the provision of the Section 25 of the Electoral Rolls Act, 2006 that provides that no question shall be raised in any court in relation to the Electoral Rolls prepared by the Election Commission is inconsistent to the provision of extra ordinary jurisdiction granted to this court by the Article 107 of the Constitution. Article 1 of the Interim Constitution of Nepal, 2007 has adopted the principle of constitutional supremacy. That provision of Article 1 is directly dependant to the Article 107 of the Constitution. The provisions of Article 1 and Article 32 cannot be materialized in absence of Article 107. Therefore, the extraordinary jurisdiction entrusted to this court by the Article 107 of the constitution has pivotal role in materializing the principle of constitutional supremacy envisaged by the constitution. The extraordinary jurisdiction of this court cannot be controlled or limited by any law made by the legislature.

26. The proviso to the Article 107(2) reads as “Provided that, except on the ground of absence of jurisdiction, the Supreme Court shall not under this Clause interfere with any proceedings and decisions of the Legislature-Parliament concerning violation of its privileges and penalties imposed for it.” Making such provision the article has opened the jurisdiction of this court for examining the constitutionality of all the acts carried out by all the other bodies. Therefore, the provision made in the Section 25 of the Electoral Rolls Act, 2006 cannot ignore or dishonor, minimize or limit or control in any form to the extraordinary jurisdiction provided to this court by the Article 107 of the Constitution.

27. The right to vote is not a fundamental right. The right to vote is legal or statutory right. Therefore, our constitution has not incorporated the voting right under fundamental rights. It has

been clearly provided in that Article 107 (2) that the extraordinary jurisdiction provided to this court is not only for the enforcement of the fundamental rights conferred by the Constitution or but also for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective. Looking into the provision of the Section 25 of the Electoral Rolls Act, 2006, the legislature has obviously intended to place the subject of Electoral Rolls prepared by the Election Commission outside of the judicial scrutiny.

28. In the context that the right to vote is legal right and the citizens cannot exercise that right unless their names are registered in the Electoral Rolls, therefore, if any citizen has been deprived from exercising voting right by illegally not registering his/her name in the Electoral Rolls, he/she will not have to remain helpless of being without remedy although the Section 25 has not provided ordinary remedy to the citizen suffered from it. His/her right to get remedy under extraordinary jurisdiction for the enforcement of the legal right for which no other alternative remedy has been provided by the ordinary law. Therefore, it cannot be held that the provision of the Section 25 of the Electoral Rolls Act, 2006 has provided excessive power to the Election Commission and thus is inconsistent to the Article 107(2) of the Constitution.

29. Every election either it may be the election of national legislature, referendum or the election of local bodies, it is conducted as national campaign. Such elections often conducted in the interval of five years is conducted after the preparation of long run, continuous labor of the civil servants, home work and expenditure of large amount of national wealth. Such elections have to be held in the date previously scheduled/predetermined by the Election Commission. If the election is not conducted in time, not only the national resources and wealth is spent but also it creates legal and constitutional complications. Therefore, it is necessary to conduct the election in the date and time determined by the Election Commission. Therefore, the programs of preparation and conduction of election have to be scheduled by the Election Commission in prior date and should be conducted the predetermined program in scheduled time and date. Otherwise, election cannot be conducted in the schedule.

30. All the steps of election from the collection of Electoral Rolls to the declaration of the

result of election are equally important and sensitive. The programs of every step have to be completed within determined time frame. With the purpose of allowing maximum participation of people in every such step, the Election Commission makes an effort to make maximum participation of the people by carrying out wider publication and propagation of election programs. Reasonable time has been provided to the citizens for this purpose.

31. Since the program of election is tight and it is compulsory to hold election in time, the Election Commission carries out all the activities and preparation diligently and carefully not to let any citizen left. If any citizen has been left despite taking maximum care, the remedy has been provided only from extraordinary jurisdiction with the purpose that it may not affect the nationwide election program. The extraordinary remedy under Article 107(2) is available. From this, the way of remedy has not been closed; the provision of extraordinary remedy is always open. Only ordinary remedy has not been provided for any activities of election. While providing remedies for such activities under ordinary jurisdiction, right to appeal to one level has also to be provided by which the process of judicial remedy will be delayed and it will obstruct the election program. The right to voting is not a fundamental right but a legal right. Although there is no remedy under ordinary jurisdiction for the enforcement of that legal right, the door of getting remedy under extraordinary jurisdiction according to the Article 107(2) of the Interim Constitution of Nepal has been left opened.
32. The reason of leaving the door of extraordinary jurisdiction open by excluding the ordinary jurisdiction is that the extraordinary jurisdiction of this court is a strong medium of getting speedy and complete justice. The programs of election are very tight and therefore, it requires prompt remedy. There is another reason for providing remedy through extraordinary jurisdiction rather than ordinary jurisdiction by the Section 25 of the Electoral Rolls Act, 2006. It is that the election programs have to be conducted within the time specified by the Election Commission and the complaint regarding election has to be settled without any delay. Therefore, the remedy under ordinary jurisdiction has not been provided.
33. In regard to this writ petition, the Section 25 of the Electoral Rolls Act, 2006 has not provided remedy only to the subject whether or not the name of any person has been registered in, or

may or may not be registered in the Electoral Rolls or preparation of Electoral Rolls or update thereof by the authorized officer.

34. In the Article 129 of the Interim Constitution of Nepal it is provided that the Election Commission shall, subject to the provisions of this Constitution and other laws, conduct, supervise, direct and control the election to the Constituent Assembly, any referendum to be held under Article 157 of this Constitution and elections to the Local Authorities. For these purposes, the Election Commission shall prepare the electoral rolls. In the matter of collecting Electoral Rolls as mentioned above, going through the legal provision made in the Electoral Rolls Act, 2006 and Electoral Rolls Rules, 2012, it is provided that the Commission shall publish a notice to that effect pertaining to program of the same, designation of Enrollment Officer, deputation of enumerator, publication of program of the collection of detail, publication of Electoral Rolls existing at that time, collection of the name of the person eligible for being a voter but whose name has not been registered in the Electoral Rolls, collection of necessary details for removing the names of the dead persons and migrated persons from the Electoral Rolls, collection of details for correcting the errors existing in the Electoral Rolls, making necessary inquiry according to collected details for updating and publication of the Electoral Rolls, collection of the application made by the eligible person whose name is omitted from the Electoral Rolls and publication of updated Electoral Rolls, collection of objection stating that the name of any person cannot be included, make inquiry into the objection and decide thereto, collecting the details for removing the name of the person whose name is repeated in the Electoral Rolls and remove thereto, publication of the final Electoral Rolls by the Enrolment Officer after completing the process of making claim, objection, holding inquiry and making amendment in it. Such procedural matters have been determined in a sequential order. Studying these legal provisions, the law aims at determining necessary legal provisions for making the Election Commission capable and ready for discharging its constitutional obligation by keeping the Electoral Rolls exact taking into consideration of the election which may be held at any time.
35. Studying the legal and constitutional provision discussed above the Election Commission is an independent Constitutional body. While exercising its function, duties and powers under the Article 129 of the Constitution, the

Election Commission is full of authority and competence. In the context of collection of Electoral Rolls, the above mentioned legal provisions provided by Electoral Rolls Act, 2006 are phase wise, sequential and transparent. While collecting Electoral Rolls, the person who is unsatisfied with it can make objection, the concerned official has to make decision according to law over that objection made and has to update the Electoral Rolls accordingly and publish the final Electoral Rolls. Viewing such provision made by the Act and Rules, the acts/activities of the Election Commission are transparent. If the Election Commission becomes bias against any candidate or the Commission does any act beyond its authority or carries out any act against law or principles of natural justice, the concerned person may file petition pursuant to Article 32 of the Interim Constitution of Nepal under the extraordinary jurisdiction conferred to this court and therefore, it cannot be held that there is an absence of remedy. Therefore, the claim of the petitioner that Section 25 of the Electoral Rolls Act, 2006 has provided excessive right to the Election Commission and is inconsistent with the Article 129 of the Interim Constitution cannot be sustained.

36. The petitioner has claimed that the other provisions of Section 11 (1), (2) and (3) of Electoral Rolls Act, 2006 except 'Citizenship Certificate' and the provision of Section 25 (A) and (B) of the same Act are inconsistent with the provisions of Preamble of the Interim Constitution of Nepal, Article 1, 2, 8, 9, 10, 11, 46, 63, 65 and 129 thereof. The Preamble and the different Articles of the constitution mentioned by the petitioner have their own separate/ independent objectives. The petitioner has not been able to show satisfactory reason of why and how these provisions of the Electoral Rolls Act are inconsistent with the provision of the preamble or that Article. The petitioner has the duty of showing with proof to the court of the fact that why and how the impugned provision of law is inconsistent with the constitution. However, the writ petitioner has failed to show and justify in the writ petition as well as during hearing of this writ 'how the said sections of the Electoral Rolls Act, 2006 are inconsistent with the Articles 1, 2, 8, 9, 10, 46, 63 and 129 of the Constitution except the Article 65(A) thereof and therefore it needs not be consider thereabout. In this subject, the Special Bench of this court in the writ petition (2067-WS-0019) of petitioner Sunil Ranjan Singh Vs Election Commission and others, has established the principle

that in the condition when the petitioner has not claimed with specification it is not appropriate for the court to conduct judicial review of the law made by the legislature based on hypothetical ground by exercising extraordinary jurisdiction. Furthermore, the Article 45 of the Interim Constitution, 2006 invoked by the petitioner has already been repealed by the 5th amendment of the Interim Constitution of Nepal, 2007 dated 2065/3/29 (July 13, 2008) that is before filing of this writ petition at this court on 2067/8/6 (November 22, 2010). Since the petitioner being unable to show why and how these provisions of the Electoral Rolls Act are inconsistent with these Articles of the constitution and has made inexplicable claim by mentioning the preamble and different Articles and has claimed that the provision of the Act is inconsistent with Article which had already been repealed, therefore the constitutionality of the Act cannot be examined/tested based on such claim and it need not be considered thereof.

37. Now to consider about the second question, the petitioner has claimed that the decision of the Election Commission dated 2067/7/16 (November 2, 2010) is inconsistent with the Section 5(1)(A) and Articles Preamble of the Interim Constitution of Nepal, Article 1, 2, 8, 9, 10, 11, 46, 63, 65 and 129 thereof and urged for voiding that decision through the order of certiorari. This plead of the petitioner is complementary to the plead mentioned in the question No 1 above and it has already been discussed in the context of question No 1 and therefore, it is not necessary to discuss here about it in detail.

While discussing in the context of question No 1 above, the provision of Section 11 of the Electoral Rolls Act, 2006 which the petitioner has urged for declaring ultra vires and void, cannot be implemented independently contrary to the Section 5(1)(A) of the said Act and Article 65 (a) of the Constitution. Land ownership certificate or certificates issued by a government office or other body cannot substitute the 'citizenship certificate' used in Section 5(1) (A) and 11(1). It has already been interpreted that the land ownership certificate or other identity card may be helpful for corroborating the citizenship, if the citizenship certificate is suspicious or dubious while collecting Electoral Rolls as used in Section 5(1) (A) and 11 (1) of the Electoral Rolls Act. Since the principle has been established from that interpretation that the use of other evidentiary documents apart from citizenship certificate

mentioned in the Section 11 of the Electoral Rolls Act, 2006 cannot be implemented independently contrary to the Section 5(1) (A) of the said Act, therefore, the decision of the Election Commission dated 2067/7/16 (November 2, 2010) does not seem to be inconsistent with the Article 8(1) of the Interim Constitution of Nepal, 2007 and Section 5(1) (A) of the Electoral Rolls Act, 2006. Therefore, the decision of the Election Commission dated 2067/7/16 (November 2, 2010) needs not be quashed.

38. Now to consider about the 3rd question, while discussing the question No 1 and 2 it has already been interpreted that the claim of the petitioner for voiding the provisions of Section 11 (1), (2) and (3) of Electoral Rolls Act, 2006 except 'Citizenship Certificate' and the provision of Section 25 (A) and (B) of the same Act being inconsistent with the provisions of Preamble of the Interim Constitution of Nepal, Article 1, 2, 8, 9, 10, 11, 46, 63, 65 and 129 thereof and also quashing the decision of the Election Commission dated 2067/7/16 (November 2, 2010) for being inconsistent with the Section 5(1) (A) could not be sustained and therefore, it need not be issued the order as urged by the petitioner. However, since the right to citizenship and the voting right consist the subject matter of national importance, the following directive order is hereby issued in the name of the Government of Nepal and Council of Ministers:

a) The plead of other interveners who joined to this petition pursuant to Rule 42 of the Supreme Court Rules, 1992 except that of Pro-public has been addressed from the decision mentioned above. However, the plead of Pro-public that single women should not be deprived from registering the name in the Electoral Rolls due to failure of obtaining citizenship certificate seems just and reasonable. All citizens who have attained the age as stipulated by the law should be allowed to be a candidate and vote in election in a democratic system. If any single citizen who is eligible for voting is deprived of the voting right, such system cannot be called the representative democracy having participation of all citizens. Therefore, any citizen because of being single woman should not be deprived from becoming a candidate and right to voting. Constitution has provided that discrimination must not be made among men, women and persons of third gender and since Nepal is a party

to CEDAW, the persons including single women and persons with third gender should get Nepali citizenship certificate. Therefore, it is hereby issued an order to make necessary provision in this regard;

- b) Nepal Treaty Act, 1990 provides that the provisions of the Convention to which Nepal is a party shall be enforceable as good as Nepalese laws. This provision is necessary. It is because, the country with rule of law should not deviate itself from the commitment to international law and human rights. Since Nepal is a party to more than 20 human right treaties, this court for 20 years, has implemented the provisions of international human right treaties invoking the Section 9 of Nepal Treaty Act, 1990. This is the provision and objective of the Section 9 of Nepal Treaty Act, 1990, however, some of the provisions of several Human Rights Conventions are not consistent with Nepal law. For example, there is difference in the definition of child in the Convention on the Rights of the Child (CRC) and the definition of child made by Nepal law. Our Constitution has contemplated the principle of constitutional supremacy and our parliament is sovereign in law making, it will be in agreement with the intention and spirit of the Article 1 to enforce the provision of convention through enabling law. Therefore, it is hereby issued an order to make necessary provision in this regard, and
- c) With the purpose that not the name of a single eligible citizen be omitted, it is hereby also issued an order to make arrangement of collecting Electoral Rolls after making easy, accessible and effective provision of distributing citizenship certificate to all the Nepali Citizens eligible for obtaining citizenship certificate.

The copy of this order shall be supplied to the respondents through the Office of the Attorney General and the case file shall be handed over as per the rule.

We concur with the above opinion.

Honorable Justice Mr. Bharat Raj Upreti

Honorable Justice Prof. Dr. Bharat Bahadur Karki

Done on Monday the 24th day of the month of Magh of the Year 2067 (February 7, 2011)

Supreme Court, Division Bench

Hon. Justice Mr. Balam K. C.

Hon. Justice Mr. Bharat Raj Upreti

Writ No. of 2067 BS: 067-WO-0703

Subject: Mandamus et al

Ms. Sabina Damai, with an age of 18 years, daughter of Ganga Maya Damai, permanent resident of Lamidanda VDC, Ward No. 02 of Dolakha district and presently residing at Harisiddhi VDC, Ward No. 09 Lalitpur district and others1 Petitioner

Vs.

Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu and others1 Respondent

- *A citizenship certificate is awarded only to the persons who have attained the qualification specified by the constitution and law. Despite a long residence in the country, no one can become a citizen unless he/she is qualified for acquiring citizenship as determined by constitution and laws. (Paragraph No. 4)*
- *Citizenship certificate is essential for every individual. None can enjoy political rights of the country unless he/she is the citizen of that country.*
- *No citizen can be deprived from obtaining citizenship from wrong reasoning or wrong interpretation of law made by prescribed officer due to his/her ignorance about Constitution, laws and covenants on Human Rights*
- *Experiencing hardships in obtaining citizenship certificate cannot be tolerable. (Paragraph No. 10)*
- *One can still obtain Nepali citizenship certificate if one of his/her parents either father or mother is a Nepali citizen. (Paragraph No. 11)*

On behalf of the Petitioner: Advocates: Ms. Mira Dhungana and Ms. Sushma Gautam

On behalf of the respondents' : Learned Joint Government Attorney Mr. Yubaraj Subedi

Precedents Adopted:

Related Acts: Rule 3(1), 3 of the Nepal Citizenship

Rules, 2006

Article 8, 8(2, b), 13, 13(1) and 20(1) of the Interim Constitution of Nepal, 2007

Local Administration Act, 1971

Order

Justice Mr. Balam KC: The brief of facts and judgment of the present writ petition filed to this Court pursuant to the Articles 32 and 107(2) of the Interim Constitution of Nepal, 2007 and presented before this bench are as follows:

The petitioner organization and we the petitioners have been continually raising voices for human rights and rights of women. As we are Nepali citizens, we have the right to constitutional remedy conferred by Articles 32 and 107(2) of Interim Constitution of Nepal, 2007, for the enforcement of human and fundamental rights and to file this writ petition accordingly.

The right to citizenship is a significant right of an individual and this is such a document which gives an identity to a person. Citizenship is the basis whereby a person may enjoy the rights awarded by a nation. Hence a person without citizenship neither has identity nor can he/she have an opportunity to enjoy the rights conferred by the state. Hence, citizenship is an inherent right of an individual.

Among the petitioners, I, Sabina Damai, am a person suffered from deprivation of Nepali citizenship. I am the daughter of Ms. Ganga Maya Damai permanent

resident of Lamidanda VDC, Ward No. 02 of Dolakha district and currently residing at Harisiddhi VDC, Ward No. 09 of Lalitpur district. I was born on 12th November, 1992 and now I am 18 years old. My mother is a Nepali citizen and she has already obtained Nepali citizenship by descent. However, even my mother does not know exactly about my father and I have clearly mentioned this fact in the application which I have submitted for obtaining citizenship certificate. I have graduated SLC from the Hindu Vidyapeeth, Balkumari, Lalitpur and as I needed citizenship certificate and decided to obtain citizenship from the name of my mother pursuant to Section 3(1) of Nepal Citizenship Act, 2006. Therefore, I applied to the Office of concerned VDC on 25th July, 2010 which was verified on 28th July, 2010. Afterwards, I submitted an application form pursuant to Rule 3(1) (3) of the Nepal Citizenship Rules, 2006 to District Administration Office Dolakha for obtaining citizenship certificate complying all the necessary processes. However, the Chief District Officer orally denied me the citizenship certificate on the ground that I have no address and identity of my father and returned the application form and no action has yet been taken in this regard. Hence, I have been deprived from the right to identity and being forced to live as a stateless person in my own country. Therefore, I have moved to this honored Court for the enforcement of my right to obtain citizenship.

In the Article 22 of Interim Constitution of Nepal, 2007, under the heading of Rights of Child, Clause (1) of the same Article has provide that *“Every child shall have the right to his or her identity and name.”* Likewise, all the clauses of the Article 13 have guaranteed the right to equality. In the Part 2, Article 8(2) of the Constitution has clearly provided that *“Any person whose father or mother was a citizen of Nepal at the time of his or her birth shall be a Nepali citizen by descent.”* Likewise, in Section 3 of Nepal Citizenship Act, 2006 under the heading of ‘Acquisition of Nepali Citizenship by Descent’ it is laid down that: A person born at a time *when his/ her father or mother is a Nepali citizen, shall be a Nepali citizen by descent*” and has included both father or mother while defining descent. The law also has granted the right to the person to choose from whose name to obtain citizenship.

Rule 3(1) of Nepal Citizenship Rules, 2006 has clearly stipulated that: *“A citizen of Nepal, who has completed the age of Sixteen years and intends to obtain the certificate of citizenship of Nepal by descent, has to make an application, in the format referred to in Schedule-1, and accompanied by the certificate of citizenship of Nepal of his or her father or mother or relative within three generations of his or her lineage and recommendation made by the concerned Local Body setting out his or her*

birth place and relationship or a certificate of birth registration.” After fulfillment of the said procedure the oral order not to provide me citizenship in the name of my mother has created the situation of disappearance of my identity and has created such a situation that forced me to remain as stateless for whole of my life. Hence, I pray for the issuance of mandamus and/or any other necessary order by the honored Court to grant me citizenship in the name of my mother and also to make interpretation in case of others who are aggrieved like me.

Apart from our constitutional and legal provisions, Article 15 of Universal Declaration of Human Rights (UDHR), 1948 has provided that everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality or denied the right to change his nationality. Article 24 of the International Covenant on Civil and Political Rights, 1966 has provided that every child shall be registered immediately after birth and shall have a name; every child has the right to acquire a nationality.

Moreover, Article 9(2) of the UN Convention on the Elimination of All Forms of Discrimination, 1979 has recognized that State parties shall grant women equal rights with respect to the nationality of their children. Article 7 of Child Rights Convention has further specified that *“The child should be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible the right to know and be cared for by his parents.”*

The provisions of treaties and conventions mentioned above have guaranteed the right to confer citizenship to both men and women. Thus, international treaties and conventions as well as our constitutional and legal provisions have provided the right to confer citizenship to mothers as well. However, in practice, injustice has been done to the person desiring to get identity from mother by depriving him/her from identity and it has been tried to make him/her stateless by presenting the discriminatory definition of descent.

Issuing citizenship certificate from the name of mother has been denied due to the patriarchal mindset, opinion, values and conception and impediment has been created by holding that women do not come under descent. The second and third periodic reports of CEDAW have made conclusion and recommendation to Nepal to abolish such a conception which Nepal has to compulsorily abide by.

Nepal has accepted, without any reservation, the obligations created by all of the above treaties and conventions to which Nepal is a party and has ratified. Section 9(1) of the Nepal Treaties Act, 1990 has clearly stated that the provisions of the treaty which Nepal has ratified shall be enforceable as

good as Nepalese laws. However, in practice, the official entrusted with enforcing those rights himself has not enforced and has deprived me, Sabina Damai, one of the petitioners, of the right to identity. The honored Court in the case of Advocate Tek Tamrakar Vs. the then His Majesty's Government, Cabinet Secretariat, Singha Durbar has issued an order of mandamus in the name of respondent on 15th September, 2005 not to deny the children including the children of Badi community to register their birth and also for making necessary arrangement to provide them Nepali citizenship pursuant to Article 9(2) of the then Constitution of Kingdom of Nepal, 1990 and Section 3(4) of the then Nepal Citizenship Act, 1963. On the basis of this judgment, I have to obtain Nepali citizenship by descent.

Thus, as mentioned in the above paragraphs, owing to the patriarchal thought of the citizenship issuing authority, I, Sabina Damai, one of the petitioners, have not obtained citizenship from the name of my mother and have been deprived of other rights, viz. the rights of constitutional equality, citizenship, employment, profession or trade, free expression of thought, property, choice of domicile as well as the rights of equality, nationality and identity. Hence, I pray for the issuance of mandamus and/or any other necessary order from the honored Court to grant me citizenship from the name of my mother and make interpretation from the honored court in case of other aggrieved persons like me. I also pray that this writ petition be awarded preference in hearing since this subject is very sensitive and is a matter of public interest. It is stated in the writ petition filed at this Court.

In the order of this court dated 27 January 2011 it is stated "What has happened in this regard, why an order as sought by the petitioner need not be issued. The respondent shall be notified for submitting written responses within 15 days of receiving this order excluding the period of travel through the Office of Attorney General. Let the case be duly presented after filing of written response or upon expiry of time period."

The written response submitted on behalf of the Office of the Prime Minister and Council of Ministers stated that the writ petitioner has not clearly mentioned which act or decision of this Ministry violated her constitutional or legal rights. In such situation the writ petition might not be filed by making this Office as respondent. Furthermore, writ petition may not be filed making this office as respondent for the act or decision made by other bodies and official authorized by the prevailing laws.

As far as the plea of the petitioner as regard to obtaining citizenship is concerned, the Interim Constitution of Nepal, 2007 and Nepal Citizenship

Act, 2006 have provided for obtaining Nepali citizenship by the Nepali citizens based on equality and without any discrimination. For the enjoyment of the substantive rights of obtaining citizenship, the existing procedural law provided by existing Nepal law must also be literally abided by. Government of Nepal is committed to implement and cause to implement the prevailing Nepal laws and the responsibilities through all agencies and officials specified by the law. However, the question raised by the opponent petitioner does not directly relate to this Office but with the Ministry of Home Affairs and therefore, it is not pertinent to speak in this matter in this written response. Hence, on the grounds and reasons mentioned above, the writ petition should be quashed.

The written response filed on behalf of the Ministry of Law and Justice in this respect has stated that, first of all, the laws relating to citizenship are not administered and enforced by this Ministry and this writ petition is filed by unnecessarily making respondent to an unconcerned agency. The plea of petitioner mainly involves an urge for obtaining citizenship by descent from the name of mother. Section 18 of the Nepal Citizenship Act, 2006 has provided that notwithstanding anything provided for in this Act, any person who is aggrieved by a decree issued by a designated authority in accordance with this Act, may file a petition within thirty five days from the date such decree was issued with the Government of Nepal for revision of such decree. The petitioner despite the availability of that alternative remedy has directly invoked the extraordinary jurisdiction of this honored Supreme Court complaining that the Chief District Officer has denied her citizenship in the name of her mother. Therefore, the plea of petitioner is meaningless.

The plea in petition is vague. Some persons among the petitioners have filed writ for the enforcement of fundamental rights whereas some other petitioners have come to file this petition as public interest litigation. The act of claiming for individual rights and interests as well as claiming as public interest litigation from the same writ petition is against the established norms of public interest litigation. Hence, the writ deserves to be quashed.

The separate written response submitted on behalf the respondents Chief District Officer and District Administration Office with similar contents state that "Pursuant to Section 3(1) of Nepal Citizenship Act, 2006, a person born at the time when his/ her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent. However, as there was no address of the petitioner's father nor is there any proof that she was born in Lamidanda VDC of Dolakha district, Nepal. Section 4 of Nepal Citizenship Act, 2006 has stipulated that a person born within the boundaries of Nepal prior to 13th

April, 1990 and residing permanently in Nepal shall be the citizen of Nepal by birth. Pursuant to Section 4(2) of Nepal Citizenship Act, 2006 application had to be submitted prior to the Constituent Assembly elections and pursuant to Section 4(3) in case anyone is unable to submit as such due to any special reason, he or she has to apply within 2 years from the date of commencement of this Act, viz. 26th November, 2006, however, the petitioner has not come into submit application within that time limitation. Pursuant to the provision of Rule 3(6) of Nepal Citizenship Rules, 2006 in the column of the certificate of citizenship of the person, whose fatherhood or motherhood has not been settled, where the name of father or mother is to be specified shall indicate the matter that the fatherhood or motherhood has not been traced out and specify the name, surname and address of the guardian. But, the petitioner has not accepted such citizenship certificate and even the Office cannot locate her paternity despite various processes. Therefore, as there is no barrier in granting her citizenship certificate pursuant to Rule 3(6) of Nepal Citizenship Rules, 2006 as well as Nepal Citizenship Act, 2006, this writ petition deserves to be quashed.

The respondent Ministry of Home Affairs has not submitted its written response as seen from the case file.

In the present writ petition duly scheduled in the daily cause list and presented before this Bench the documents enclosed in the case file have been reviewed. Learned advocates representing the petitioners Ms. Mira Dhungana and Ms. Sushma Gautam pleaded that there is no dispute in the fact that the petitioner Sabina Damai is a daughter of a Nepali citizen Ganga Maya Damai. The whereabouts of her father is not known. It is obvious that Sabina Damai is citizen of Nepal by descent according the provision of the Article 8(2) of Interim Constitution of Nepal, 2007 and Section 3(1) of Nepal Citizenship Act, 2006. There is a provision that such persons, whose paternity or maternity is not establish, can obtain citizenship according to the process as prescribed in the Rule 3(3) of Nepal Citizenship Rules, 2006. However, when Sabina fulfilling the process mentioned above and applied for citizenship from her mother's name had submitted the application to the District Administration Office, Dolakha, the respondent Chief District Officer ordered orally and did not provide her citizenship and thus she has been forced to live without citizenship and as stateless and resultantly deprived from constitutional right of obtaining citizenship and also deprived from legal rights that are available to the citizen. The act of respondent is against the Interim Constitution of Nepal, 2007, Nepal Citizenship Act and Rules, 2006 as well as

international instruments to which Nepal is a party. Therefore, necessary orders should be issued in the name of respondents making interpretation so as to provide citizenship to petitioner Sabina Damai and other persons aggrieved like her.

Learned Joint Attorney Mr. Yubaraj Subedi representing on behalf of the respondent Government of Nepal argued that Government of Nepal has not discriminated to any of the Nepali citizens like the petitioner in providing citizenship. For the exercise of substantive rights as claimed by the petitioner, some procedural formalities also have to be fulfilled. As Sabina Damai has declined to obtain citizenship mentioning that the fatherhood has not been traced out and various processes were adopted to trace out name, surname and address of her father. Therefore, it cannot be interpreted that she has been denied to provide citizenship. Hence, the writ petition has to be quashed.

Now, upon listening to the above arguments, it has to be decided whether or not the writ as sought by the petitioner should be issued?

In this case, it has been obvious that the petitioner Sabina Damai is 18 years old daughter of a Nepali citizen Ganga Maya Damai, resident of Lamidanda V. D. C of Dolakha district. It seems from the case file that even her mother has been unable to mention who her father was.

The case file also includes a Report of Public Field Inquiry conducted on 28th July, 2010 which reads that: "The mother of the petitioner came to Kathmandu in search of work when she was 22 and used to live in rented room at Jawalakhel. There she had sexual relationship with the laborer working therein and became pregnant from which the petitioner was born. As she had sexual relationship with various persons and therefore, even she cannot identify from whose physical relation the petitioner conceived. The paternity of Sabina Damai has not been known even to her mother too. However, it has been corroborated from Nepali citizenship certificate bearing No 1353 issued by District Administration Office, Dolakha on 13th May, 1988 that Sabina Dami's mother Ganga Maya is a bona fide Nepali citizen born in Lamidanda V. D. C. 2 of Dolakha district on 19th January, 1964. Thus, there is no dispute that the mother of Sabina Damai is a Nepali citizen by descent.

From the recommendation of Lamidanda V. D. C dated 25th July, 2010 and the Report of Public Field Inquiry, it has been proved that the petitioner Sabina Damai was born in Lamidanda VDC-2, Dolakha district on 12th November, 1992.

It has been obvious that the present writ petition has been filed because the petitioner has not been able to obtain Nepali citizenship certificate until

today because of the denial by the authorities only on the ground that the address and identity of her father has not been traced out.

Going through our constitutional provision regarding citizenship, Chapter 2 of Interim Constitution of Nepal, 2007 provides for citizenship. Article 8(1) of the Constitution has provided that *“At the commencement of this Constitution, the persons who have acquired the citizenship of Nepal and who are eligible to acquire the citizenship shall be the citizens of Nepal.* Article 8(2) of the Interim Constitution of Nepal provides that *“At the commencement of this Constitution, the following persons who have their permanent domicile in Nepal shall be deemed to be the citizens of Nepal by descent:*

- (a) any person who has acquired citizenship by descent prior to the commencement of this Constitution,
- (b) any person whose father or mother was a citizen of Nepal at his or her birth.

Apart from the constitutional provision regarding citizenship, going through the legal provisions regarding citizenship, the dissolved House of Representatives has enacted Act No 25 of the year 2006, the Nepal Citizenship Act, 2006, which has been brought into commencement on 26th November, 2006. Section 3 (1) of the Act has clearly laid down that: *“A person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent.”*

Section 8 of the Act has specified the procedure to be followed for obtaining citizenship certificate by a person who is qualified for obtaining it. Pursuant to the provision of Section 8, a person in order to obtain Nepali citizenship certificate by descent, he or she

- (1) *has to attain the age of 16 years,*
- (2) *has to be the descendant of the relatives within three generations from paternal or maternal or selfside has obtained the citizenship certificate,*
- (3) *the concerned Village Development Committee or Municipality has to make recommendation mentioning the place of birth and relationship.*

Nepal Citizenship Rules, 2006 has been framed exercising the power conferred by Section 23 of the Nepal Citizenship Act, 2006. These Rules have underlined the procedures for obtaining citizenship certificate. The Constitution and Act have prescribed qualification for citizenship whereas the Rules have laid down the procedures for obtaining Nepali citizenship certificate. As such, the person qualified to obtain Nepali citizenship certificate shall have to submit an application before the official as prescribed in the format specified in Schedule 1 of the Rules.

Although the petitioner was born from a Nepali

citizen Ganga Maya who has obtained Nepali citizenship certificate it has been obvious from the petition that even her mother has not known about the father of petitioner.

Here a question has been raised as to whether a person who has attained the qualifications specified by constitution and law for becoming a citizen of can be denied the right to obtain citizenship only on the ground that his or her father has not been traced out.

Upon studying the written responses of the respondents, it is mentioned that though Section 3 (1) of the Act has laid down that a person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent, and as whereabouts of the petitioner’s father has not been traced and there is no proof that she was born in Lamidanda VDC of Dolakha district. Therefore, she has been denied Nepali citizenship certificate.

Now in this regard, it has to be considered on the whether or not a person who has attained the qualifications specified by constitution and law for obtaining Nepali citizenship of Nepal can be denied the right to obtain citizenship only on the ground that his or her father has not been traced out.

There is no debate on the fact that the mother of petitioner is a person who has acquired Nepali citizenship certificate by descent and that the petitioner was born in Dolakha District of Nepal from Ganga Maya who has obtained Nepali citizenship certificate.

From the above mentioned contents of petition and the written response of Chief District Officer of Dolakha, the following two questions have been raised:

- a) Whether the petitioner is a person qualified enough to obtain Nepali citizenship certificate or not?
 - b) Whether Nepali citizenship certificate can be obtained from mother’s name in case whereabouts of his or her father has not been traced out?
2. To consider about the first question, the Interim Constitution of Nepal, 2007 and Nepal Citizenship Act, 2006 have prescribed qualification for obtaining Nepali citizenship whereas the Nepal Citizenship Rules, 2006 have laid down the procedures for obtaining Nepali citizenship certificate.
 3. As the petitioner was born in Nepal, she has completed 18 years of age, her mother has been a Nepali citizen by descent who has obtained Nepali citizenship certificate bearing the No 1353 issued by District Administration Office, Dolakha, it is hereby established that

the petitioner is qualified to obtain Nepali citizenship certificate upon fulfilling the procedures set forth in the Nepal Citizenship Act, 2006 and Rules thereof.

Article 24(3) of the International Covenant on Civil and Political Rights, 1966 to which Nepal is a party and whose provisions apply on good as Nepalese laws pursuant to Section 9 of the Treaty Act, 1990, has provided that every child has the right to acquire a nationality. Likewise, Article 7(1) of Child Rights Convention, 1989 to which Nepal is a party has further specified that *“The child should be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible the right to know and be cared for by his parents.”*

Article 7(2) of Child Rights Convention has provided that *“State parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child could otherwise be stateless.”* Upon becoming a signatory to Child Rights Convention it is the legal obligation of Government of Nepal to implement the rights conferred by the Convention to children and to save them from being stateless.

4. Citizenship is of paramount importance for every person. The citizenship certificate alone can identify a person as a citizen of a certain country. A person cannot become citizen only by his/her long residence in a particular country and without obtaining citizenship certificate he or she cannot enjoy political rights. In order to enjoy economic and political rights, and to identify someone as citizen, the citizenship certificate is indispensable. A citizenship certificate is awarded only to the persons who have attained the qualification determined by the constitution and law. Despite a long residence in the country, no one can become a citizen unless he/she is qualified for acquiring citizenship as determined by constitution and laws.
5. Various rights such as the right to enjoy fundamental rights, to assume public office, to exercise political rights, right to enjoy social security, right to adult franchise, etc. are conferred to the citizens by their State. Political rights cannot be granted to other persons. In such significant and sensitive issues, a State cannot render equal treatment between its citizens and the persons who have not acquire the certificate irrespective of their longer residence in the country. The person who has

attained the qualification prescribed by the constitution and law for obtaining citizenship certificate and desires to obtain it shall have to fill up an application in the prescribed format, sign on it declaring that the particulars mentioned therein are true and that he/she shall be liable to consequences according to law in case the particular mentioned above proved to be false enclosing the proof that he/she is Nepali citizen. Then the prescribed official has to issue the Nepali citizenship certificate to such person.

6. Article 13 of the Interim Constitution of Nepal, 2007 has provided the right to equality. This is a fundamental right granted to all the citizens without discrimination of any kind. Article 13(1) provides that all citizens shall be equal in the eyes of law, and 13(2) has prohibited discrimination on application of general laws on the ground of sex. Therefore, from the grounds mentioned above, there is no dispute on the fact that the petitioner was born in Nepal and that the mother of petitioner is a Nepali citizen who has acquired Nepali citizenship certificate, the petitioner is eligible for obtaining Nepali citizenship certificate although her fatherhood has not been traced out. There also seems no dispute that Nepali citizenship certificate by descent has to be granted to the petitioner if she files an application in the format prescribed in the Schedule 1 and fulfilling the procedures set forth in Rule 3(1) (3) of Nepal Citizenship Rules, 2006. By showing the ground /reason that the whereabouts of her father is not known, denying her granting citizenship certificate does not mean only unequal treatment towards the petitioner but also the violation of her right to Nepali citizenship.
7. Now to consider about the second question, it is found that the petitioner has been denied Nepali citizenship certificate on the ground that the address of her father has not been traced out. Such an act is contrary to the provisions of the Interim Constitution of Nepal, 2007, Nepal Citizenship Act, and Rules, 2006 and international instruments such as ICCPR, 1966, CRC, 1989 and CEDAW, 1979 as well.
8. In the present dispute, the acts of all respondents especially those of the Chief District Officer entrusted with the responsibility of providing citizenship certificate are not only against the Interim Constitution of Nepal, 2007, Nepal Citizenship Act, and Rules, 2006 and international instruments such as ICCPR, 1966, CRC, 1989 and CEDAW, 1979, but also are arbitrary. Chief District Officer is the chief administrator of the Government of Nepal

of the concerned district. His/her duties, functions and powers are prescribed in Local Administration Act as well as in the respective laws. At the centre, the council of ministers headed by Prime Minister runs the general administration of country by exercising the executive power whereas at the district level, the Chief District Officer runs the district administration by exercising the powers conferred by the relevant laws. Chief District Officer, thus, is the administrative head of a decentralized administration.

9. Chief District Officer, exercises executive/ administrative power apart from some quasi-judicial powers to hear cases provided to him/her exceptionally. While going through the Local Administration Act, 1971 and Nepal Citizenship Act, 2006, the Chief District Officer performs the different functions ranging from maintaining law and order in the district to the works for the welfare of the people. From among these powers and duties of Chief District Officer, the duty and power to issue Nepali citizenship certificates to the Nepali citizens eligible to obtain it has crucial importance.
10. According to the above mentioned constitutional and statutory provisions, a person born from the parents who are Nepali citizens and born within the territory of Nepal, has the right to obtain Nepali citizenship certificate from the district where he/she was born. Citizenship certificate is essential for every individual. None can enjoy political rights of the country unless he/she is the citizen of that country. He /She is not identified as a citizen of that country in absence of citizenship certificate. Without citizenship certificate no one can acquire immovable property, participate in elections, cast votes or use any other right conferred only to Nepali citizens. The Interim Constitution of Nepal, 2007 and Nepal Citizenship Act, 2006 have clearly specified the person born in Nepal at what condition is eligible for obtaining Nepali citizenship and Nepali citizenship certificate is to be issued to the person situated in what condition after fulfilling what type of procedure. Since Nepal is a welfare state, it is the right of every person to acquire citizenship certificate in a easy and simple manner upon filing an application in the format prescribed by law and fulfilling necessary procedure after attaining qualification required for obtaining Nepali citizenship certificate by birth in Nepal. No citizen can be deprived from obtaining citizenship from wrong reasoning or wrong interpretation of law made by prescribed officer due to his/her ignorance about Constitution, laws and covenants on Human Rights. The

matter of facing hardships in obtaining citizenship certificate is not acceptable. However, it has been obvious from this writ petition that such a condition exists.

11. Upon examining the written responses of respondents, it seems that the Government of Nepal and Chief District Officer are ignorant about the constitutional and legal provisions as regard to the conditions of becoming a Nepali citizen and obtaining Nepali citizenship certificate. Reviewing the responses of the Government of Nepal and Chief District Officer it seems that they are guided by male dominated evil tradition and evil practices. Examining the constitutional and legal provisions of obtaining citizenship, it is clear that any person born in Nepal either of whose father or mother was a Nepali citizen at his birth, shall be eligible for obtaining Nepali citizenship certificate. It is not necessary that his/her father has to be traced out. Article 8 of the Interim Constitution of Nepal, 2007 stipulates that *“At the commencement of this Constitution any person who has his or her permanent domicile in Nepal and whose father or mother was a citizen of Nepal at his or her birth shall be deemed to be the citizen of Nepal by descent.”* Article 8(2) (b) has not provided *father and mother* but rather *father or mother*. In Article 8(2) (b) there is no use of ‘and’ after father but there is the use of ‘or’. If there had been use of ‘and’ after father instead of ‘or’ Nepali citizenship certificate could have not been obtained by the person whose father had not been traced out. However, the Constitution has clearly provided “father or mother” and therefore, a person can obtain Nepali citizenship even if only one of his/her parents is a Nepali citizen. Therefore, the respondents have given wrong meaning and made misinterpretation of the clear provision of Constitution by denying citizenship certificate to the petitioner.
12. Interim Constitution of Nepal, 2007 has conferred the mother an equal right and place with father as regard to Nepali citizenship. Article 13 of the Interim Constitution of Nepal, 2007 has provided the right to equality. Article 13(1) provides that all citizens shall be equal in the eyes of law, and 13(2) has prohibited in making discrimination on application of general laws on ground of sex. Article 20(1) has barred from making discrimination of any kind against women by virtue of being woman. The rights to equal treatment for woman with man and prohibition on discrimination of any kind against women by virtue of being women have been guaranteed as fundamental right. In

such situation, it is not only violates the right of the petitioner but also the fundamental rights of her mother Ganga Maya conferred by the Article 13 and 20(1) not to issue citizenship certificate to the petitioner citing the reason that her father has not been traced out despite the petitioner's mother Ganga Maya has been proved to be the citizen of Nepal from her citizenship certificate. Such an act of making discrimination against women on the ground of sex infringes the women's right to equality. The Court enforces such infringed rights under Article 107(2). There is an express provision in Article 33 (m) and (n) of the Interim Constitution of Nepal, 2007 that it shall be the obligation of the State to effectively implement the international treaties and conventions to which Nepal is a party and to eliminate discrimination of all types. The act to deny to provide Nepali citizenship certificate to the petitioner violating the Constitution, statutes and conventions to which Nepal is a party, on the ground that her father has not been traced out, cannot be acceptable for this court. The Court takes this matter seriously. Such an act is a mockery to the rule of law.

13. Nepal has become a party to ICCPR, 1966, CRC, 1989 and CEDAW, 1979. Pursuant to Section 9 of Nepal Treaty Act, 1990 after becoming a party to those conventions, the provisions of the conventions are enforceable instead of Nepal law, if the provisions of these conventions are inconsistent with any Nepal law. In the condition that there is no debate on the fact that the petitioner's mother is a Nepali citizen, the act of denying her Nepali citizenship certificate on the ground that her father has not been traced out when there is no contention on the fact that the mother of petitioner is a Nepali citizen, has violated her right conferred by the Article 13 and 20(1) of the Interim Constitution of Nepal, 2007.
14. It has been proved that petitioner's mother Ganga Maya Damai is a Nepali citizen from her Nepali citizenship certificate bearing the No 1353 issued by District Administration Office, Dolakha on 13th May, 1988. Even in such situation it has been denied to issue citizenship certificate to the petitioner on the ground that her father has not been traced out, such an act has not only violated the rights of the petitioner and her mother conferred by the Interim Constitution of Nepal, 2007 but also the rights conferred by different conventions to which Nepal is a party. The treaties and conventions to which Nepal is a party have forbidden discrimination between men and women and have also abolished the customs

and tradition that consider men as superior than women.

Article 26 of the International Covenant on Civil and Political Rights, 1966, to which Nepal is a party, has provided that:

Article 26. *"All persons are equal before the law and are entitled without any discrimination to the equal protection of law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

15. Article 26 of ICCPR is a provision corresponding to the right to equality provided by Article 13 of our Constitution. According to the provision of that Convention discrimination cannot be made among men, women or even third gender on any ground. According to Article 26 of that convention the State parties have to formulate laws to prohibit discrimination based on sex.

Article 1 of UN Convention on the Elimination of All Forms of Discrimination, 1979 reads as follows: *"For the purposes of the present convention the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."*

Apart from this, Article 2 (a), (b), (d) and (f) are also important which are as follows:

2. *State parties condemn discrimination against women in all its forms agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*
 - a) *To embody the principle of equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure through law and other appropriate means, the practical realization of this principle.*
 - b) *To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.*
 - d) *To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with*

this obligation.

- f) *To take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.*

16. Article 2 of CEDAW has provided that, after becoming a party to it, the State party has to condemn discrimination against woman in all its form and for the practical realization of elimination of discrimination against woman, has to pursue appropriate policy and law to abolish the existing laws, rules, custom and usage which constitute discrimination against women. The Article 5 (a) is as follows:

5. State parties shall take appropriate measures:

- a) *To modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or superiority of either of the sexes or on stereotyped roles for men and women.*

According to above mentioned provision, a State party shall have to take appropriate measures to eliminate prejudices and customary and all other practices which are based on the idea of inferiority or superiority of either of the sexes.

Moreover, Article 9(2) of CEDAW reads that: State parties shall grant women equal rights with men with respect to the nationality of their children.

Thus, the Clause (2) has conferred women equal rights with men with respect to the nationality of their children.

Article 16(1) (d) reads as :

- d. *The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children, in all cases the interests of the children shall be paramount.*

Thus, according to the provision of Article 16(1) (d), irrespective of the marital status of parents, both of the parents shall have paramount interest in matters relating to their children, and the State parties have to make necessary legal provisions for it.

Articles 7(1) and 7(2) of Convention on the Rights of Child, 1989 (CRC) are also important which are as follows:

- 7(1): *The child should be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible the right to know and be cared for by his parents.*

According to Clause (1), every child immediately after birth acquires the right to identity and name.

- 7(2). *State parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child could otherwise be stateless.*

Thus, the Clause (2) has called the state parties for making necessary provisions in national legislation so as to protect children from being rendered stateless.

17. Apart from the above mentioned provisions, Article 8 of the Interim Constitution of Nepal, 2007 and Nepal Citizenship Act, 2006 have clearly laid down the qualification for becoming a Nepali citizen whereas the Nepal Citizenship Rules, 2006 have dealt with the procedural aspects on obtaining citizenship certificates.

Part 3, Articles 13 and 20 of the Interim Constitution have conferred right against discrimination based on sex as fundamental right whereas Article 22 has provided every child the right to name and identity as fundamental right as well. The international treaties and conventions to which Nepal is a party including ICCPR, 1966, CRC, 1989 and CEDAW, 1979 have also prohibited discrimination against women on the ground of sex and ensured children the right to obtain citizenship from either father's or mother's name of their choice. However, contrary to the above provisions, the act of denying Nepali citizenship to the petitioner only on the ground that her father has not been traced out has resulted in discrimination against the petitioner as well as her mother. Apart from this, the petitioner has been deprived from rights like showing her identity and exercising her political rights and also from an important right to obtain the citizenship certificate.

18. The law has conferred the Chief District Officer the power/authority to issue citizenship certificate. It is the legal obligation of the Chief District Officer to provide citizenship certificate to the person qualified according to the Interim Constitution of Nepal, 2007 and Nepal Citizenship Act, 2006, in case he or she submits application for obtaining citizenship certificate in the prescribed format. Government of Nepal and the Chief District Officer have to be known and informed of the provisions of the Constitution of Nepal, Nepal laws and the ICCPR, 1966, CEDAW, 1989 and CRC and they cannot be excused for their ignorance of the provisions made by

them. From the written responses, it is seen that those that Government of Nepal and the Chief District Officer who are the authorities to issue citizenship certificates are ignorant of these constitutional legal provisions. They are still of the ancient concept/ mindset and mentality that a child can obtain citizenship only from the name of his/her father. Contrary to the provisions of Articles 13(1) and 20(1) of Interim Constitution of Nepal, 2007 as well as the provisions of ICCPR, 1966, CRC, 1989 and CEDAW, 1979 that women have equal rights with men in all areas and aspects such as familial, economic, social, political, domestic and other sectors the Chief District Officer has been influenced from the male dominated practices, tradition and norms etc. sustained in society. The act of Chief District Officer declining to issue citizenship certificate to the petitioner on the ground that her father has not been traced out shows that even the Chief District Officer who is the head of a district has not been able to make himself free from the old traditions and usages against women. Therefore, such traditions and usages have to be abolished. Now, it seems expedient to quote some of the superstitious conventional practices pejorative to women, deny their existence equal with men consider them inferior to men, practice discrimination and exploitation show disrespect and derogate them.

19. While going through our history, not only exploitation and injustice has been made against women by depriving them from enjoyment of social, political and economic rights from centuries but also they were used as required because they are weaker sex. Women were raped, exploited and then abandoned due to which even the capable women could not utilize their knowledge and skill consequently they could not become independent. Women occupy half of the population of any country and they have rendered significant contribution in political movements and building national economy, family and household economy in particular. However, women cannot get their share in proportion to their contribution and they are forced to live an inhumane and undignified life without any wrong doing. Though women are also human beings like men and third gender, women were treated as inferior to men and used as a commodity which could even be bartered or sold. Even such an injustice was done against women that they were compelled to die along with their husbands in the name of evil Sati custom. Those evil practices, custom, superstitions

and evil values were so formidable that the women have to experience a tradition as much cruel and inhumane as Sati which was against the right to life of women. That era of history or period when the Sati Tradition was not abolished, has to be taken as a barbaric period in regard to the right of women. Sati custom is a tradition against humanity and civilization. Now, even if we express as much tributes that shall not suffice for those women who had been victim of that evil practice perished in the name of Sati. Therefore, the evil practices, conceptions, traditions and norms which are still in existence have to be completely eliminated.

20. It will be a great respect and tributes to our ancestor women who had had sacrificed themselves by burning themselves in the name of Sati Custom if we are able to eradicate the evil custom, tradition and usages which are still prevalent in our society as the remnants of discrimination against women. Though the Constitution has provided right to equality to women like men and right against any kind of discrimination by virtue of sex and international instruments relating to human rights like ICCPR, 1966, CRC, 1989 and CEDAW, 1979 have conferred different rights to women, women are still exploited and suffered from discrimination due to evil traditions, custom and practices, usages and conceptions. For instance, in some of the parts of Nepal women are not permitted to live in the house at the period of menstruation and maternity and they have to live with animals in cow-sheds. There is a belief that widow should not appear when someone is going to start a journey, there are evil practices like Kamlari and Chhaupadi and the custom that women have to take fasting in the name of husbands during special festivals and the practice of alleging women of practicing witchcraft. Such types of various customs and practices discriminating and exploitative to women are prevalent in the name of traditions, culture and practices. They are yet to be eradicated. Despite the clear legal provision that if either of the father or mother of a person is a Nepali citizen and he/she is born in Nepal can obtain Nepali citizenship certificate even if his/her father has not been traced out, the petitioner Sabina Damai and her mother Ganga Maya have been deprived from Basic Human Rights like the right to obtain citizenship certificate because the representative of the state like Chief District Officer have been influenced from the hangover of the superstitions, customs and practice that man is superior than woman.

21. Women comprise of almost half of world's population however, in Nepal, women are exploited due to the evil practices and usages that men are superior to women. Women are dominated by men. Due to the domination and tradition, women are subject to domestic violence and exploitation. Nepalese society is still traditional. In our society, social, economic, psychological and even sexual exploitation has been made against women, sometimes in the name of religion and sometimes in the name of tradition. Though the Constitution has provided for equal treatment between men and women and ensured equal protection of law, women have not fully acquired equal rights and protection.
22. Notwithstanding the commencement of an inclusive Constitution in Nepal, the provisions of fundamental rights in Part-3 thereof, the extraordinary jurisdiction awarded to this court by the Article 107, and Nepal has become a party to core human rights treaties; due to the lack of education, tradition, misconception, poverty and superstitions, both the exploitation and domination of women from patriarchal society and male have not eliminated in rural areas. When people have to receive any service or has to identify them even in the offices whereby the Government of Nepal delivers service to the people; they have to identify as their guardian to father in case of a child, husband or male relatives of in-laws family in case of wife and only such a relationship gets recognition. This mentality and practice is yet to be extinguished. A glaring example to this predicament is the case of Sabina Damai who has suffered from the patriarchal traditions.
23. The main cause of this plight is the lack of punitive legislation as envisaged by the CEDAW to modify or abolish all types of existing laws, rites, custom, traditions, superstition, conceptions and different evil practices. In this regard, the Court has also issued directive orders, times and again for enacting such punitive laws in this matter.

Here, it would be relevant to revert to the following provisions of CEDAW:

- Article 2 State parties condemn discrimination against women in all its forms agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
- 2(f) To take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices which

constitute discrimination against women.

Article 5 State parties shall take appropriate measures:

- 5 (a) To modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or superiority of either of the sexes or on stereotyped roles for men and women.

We have to pursue these provisions of CEDAW concerning the protection of women's rights.

24. Hence, on the basis of the aforesaid reasons and grounds and their analysis, the following orders have been hereby issued in this writ:
- a) From the analysis of the above mentioned constitutional and legal provisions as well as the international treaties and conventions to which Nepal is a party, as it has been proved from the above facts that the petitioner Sabina Damai's mother Ganga Maya Damai is a Nepali citizen and that the petitioner Sabina Damai is born from Nepali citizen Ganga Maya Damai in Nepal, a writ of mandamus has hereby been issued in the name of respondent District Administration Office to grant Nepali citizenship certificate to the petitioner from the name of mother according to laws.
- b) As there is an obvious provision in Article 8(2) of Interim Constitution of Nepal, 2007 that Nepali citizenship may be obtained from the name of mother in cases similar to that of the petitioner whose mother is a Nepali citizen but whose father, though Nepali, has not been traced out or even the mother cannot determine who the father of the child is, it is the fundamental and human right of children to obtain citizenship in an easy manner. However, it has not been implemented in practice, so as to ensure that any other person with the cases similar that of petitioner need not move to this Court pursuant to Article 32 and 107 of the Constitution for obtaining Nepali citizenship certificate again, in case a child born in Nepal to a Nepali female who has been proved to be the citizen of Nepal, but whose father's whereabouts have not been traced out, approaches for obtaining citizenship from the name of his/her mother, it is hereby ordered that upon fulfilling the processes and procedure of Nepal Citizenship Act and Rules, 2006 the citizenship certificate

shall be issued to him/her from the name of mother in a easy manner. A directive order is also hereby issued in the name of respondent Ministry of Home Affairs to circulate this decision to all the Chief District Officers nationwide.

- c) CEDAW has provided that all the evil practices, traditions and customs which discriminate against women have to be condemned and eliminated by formulating appropriate law if necessary to eliminate those evil practice, tradition and customs. Therefore, a directive order is hereby issued in the name of respondent Ministry of Home Affairs to frame laws if so required and to undertake the necessary and effective measures to eliminate such evil practices, traditions and customs which are still prevailing in Nepali society.
- d) In case all the evils customs and traditions which put men as superior to women and women as inferior to men in the name of religion, culture and tradition are not abolished, the patriarchal mindset shall prevail which shall continue to hinder obtaining citizenship and other facilities for the petitioner and other persons similar to that of the petitioner who has not been able to obtain citizenship certificate because of lack of address

or address has not been traced out, non availability of father. Hence, all the custom and traditions that deny the very existence of women have to be eliminated. Therefore, a directive order is hereby issued in the name of respondent Office of Prime Minister and Council of Ministers to raise necessary public awareness for eliminating such traditional custom, culture and practices by launching programs of education and public sensitization.

25. The notice of this order shall be served to the respondents through the Office of Attorney General. Moreover, as the subject of this dispute pertains also to women's rights, the notice of this decision shall also be served to the Government of Nepal, Ministry of Women, Children and Social Welfare and National Women Commission although they have not been respondents. The case file shall be duly handed over after writing off its record from the registry.

I concur with the aforementioned opinion.

Justice Mr. Bharat Raj Uprety

Done on Sunday, the 15th day of the Month of the Year 2067 (27th February, 2011)

Bench Officer: Mr. Upendra Prasad Gautam



Supreme Court, Division Bench

Honorable justice Girish Chandra Lal

Honorable Justice Dr. Bharat Bahadur Karki

066-WO-0869

Subject: Certiorari and others

Nina Tamang (Gurung), resident of Samundradevi V. D.C. ward No 3 of Nuwakot District ...1
 Advocate Meera Dhungana, on behalf of Forum for Woman Law and Development
 located in Kathmandu Metropolis ward No 11 Thapathali and on her own behalf.....1 Petitioner
 Advocate Sushama Gautam, on behalf of Forum for Woman Law and Development
 located in Kathmandu Metropolis ward No 11 Thapathali and on her own behalf.....1

Vs.

Government of Nepal, Office of the Prime Minister and Council of Ministers,
 Singhadarbar, Kathmandu1
 Government of Nepal, Ministry of Home Affairs, Singhadarbar, Kathmandu1 Respondent
 The Government of Nepal, Ministry of Law and Justice, Singhadarbar, Kathmandu1

The brief description of the fact and the judgment of the present writ petition filed to this court falling under its jurisdiction pursuant to Articles 107 of the Interim Constitution of Nepal is as follows:

Among the petitioners I, Nina Tamang, am a person aggrieved from deprivation of the equal right to obtain citizenship like other citizen of Nepal. I was born on Bishnu V. D. C. ward No 1 of Kathmandu in 2050/06/29 (October 15, 1993) from the conjugal relationship of mother Hira Maya Tamang and father Hitman Tamang. I married to Binod Gurung, resident of Samundradevi V. D. C ward No 3 of Nuwakot District on 2066/10/08 (January 22, 2010). On 2065/10/15 (January 29, 2010) I acquired recommendation from Samundradevi V. D. C and submitted an application to the District Administration Office Nuwakot enclosing necessary documents for acquiring citizenship certificate. The District Administration Office Nuwakot had corresponded to the District Administration Office Kathmandu to avail details. District Administration Office Kathmandu replied that my mother had acquired citizenship certificate in 2042/05/10 (August 26, 1985) however, no details about my father were found. Thereafter, I was

denied to provide citizenship certificate orally. Both of my parents are Nepali citizen. My mother had worked hard in raising, nurturing and educating me. When I sought employment after I passed S. L. C., I was denied it due to the absence of citizenship certificate. I have faced problems in acquiring higher education.

In the Article 8 (2) of the Interim Constitution of Nepal, 2007 and Section 3(1) of Nepal Citizenship Act it is provided that "A person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent." Therefore, there is no confusion that I am entitled for obtaining citizenship by descent. I have already attained 16 years of age and I have submitted the application enclosing the recommendation of the local body. Despite this, owing to patriarchal mindset, thinking and conception I have been denied citizenship orally by violating the constitutional and legal provision consequently my identity has been disappeared. Different Conventions and treaties including Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights and Convention on the Elimination of All Forms of Discrimination against Women have granted

women equal rights with men to acquire citizenship. Making narrow interpretation of the word 'descent' I have been denied to obtain citizenship in the name of husband and resultantly I have been deprived from the right to make choice from whom I have to get identity. Therefore, I request to issue an order of mandamus and/or other necessary order to provide me citizenship certificate from the name of my husband. It is stated in the writ petition.

In the Order of this Court dated 2066/12/20 (April 2, 2010) it is stated that the respondents shall be required to submit their written response through the Office of the Attorney General within 15 days upon receipt of this order excluding the time necessary for the journey explaining what has happened in this case? Why should the order as sought by the petitioner not be issued? The writ shall be presented after serving the notice to the respondents and upon the submission of response or lapse of time limitation.

In the written response submitted by the Office of the Prime Minister and Council of Ministers it is stated that, for the enjoyment of the substantive rights of obtaining citizenship provided by the prevailing Nepal law, the existing procedural law must also be literally abided by the petitioner. The writ petitioner has not entered the court with clean hand since she has not abided by the legal duties which she has to abide by, and has filed this writ petition based only on oral expression made with good faith for following the procedure as determined by the law. Therefore, the writ petition should be quashed.'

The Government of Nepal, Ministry of Home Affairs in its written response has stated that one of the grounds of acquiring citizenship certificate provided by the Interim Constitution of Nepal, 2007 is that, if the father or mother of a person is a Nepali citizen at the time of his or her birth, such person acquires the citizenship by descent. Law has not made any provision as claimed by the petitioner of providing citizenship certificate from the name of husband. Therefore, the writ petition urging for obtaining Nepali citizenship certificate by descent in the name of husband is not lawful and therefore, the writ petition should be quashed.

In the written response submitted on behalf of the Ministry of Law and justice it is stated that, the writ petition deserves to be quashed which has made this Ministry as respondent which has no concern with obtaining issuing citizenship certificate. The petitioner has urged for citizenship certificate by descent in the name of husband that is against the provision of Nepal Citizenship Act, 2006 and Nepal Citizenship Rules, 2007. The existing law has guaranteed the petitioner the facility of obtaining citizenship by descent from the name of her

father or mother and therefore, the writ petition is meaningless and should be quashed.

District Administration Office, Nuwakot in its written response has stated that, it is the procedural rule and duty of this office to ask for submitting necessary documents and make scrutiny of the documents received for verification. It has been obvious from the petition that the applicant has taken back the documents which she has claims of having submitted to this office without registration or endorsement from this office. The petitioner has not been deprived from obtaining citizenship certificate and has not been denied for it if she comes by enclosing the evidence and fulfilling procedure according to Nepal Citizenship Act, 2006 and Nepal Citizenship Rules, 2007. The writ petition is not based on true facts and therefore, deserves to be quashed.

In the written response submitted on behalf of the District Administration Office Nuwakot it is stated that, the application of the petitioner has not been registered at this office and the petitioner may have taken it back". However, from the copy of the letter written by that office to the District Administration Office Kathmandu which is submitted with the writ petition, it is written that " Nina Tamang has submitted an application for obtaining Nepali Citizenship certificate" and has also inquired about the citizenship of her father Hitman Tamang. In which ground has the correspondence been made to the District Administration Office Kathmandu about the application form which is not submitted and registered in one's own office? The District Administration Office shall be asked for providing its accurate response and the writ petition shall be presented before the bench upon receiving of the response. It is stated in the order of this court dated 2067/10/20 (February 3, 2011). The response thereof received from District Administration Office has been enclosed in the case file.

In this writ petition presented before the bench as per the rule, after hearing the arguments of learned advocates Ms. Meera Dhungana and Susma Gautam on behalf of the petitioner and learned Deputy Government Attorney Mr. Khem Raj Gyawali representing on behalf of the respondent Government of Nepal, the court has to decide whether or not the writ of mandamus as sought by the petitioner should be issued.

The petitioner has mainly sought for issuing necessary order including the writ of mandamus in the name of respondent to provide and cause to provide the petitioner the citizenship by descent from the name of her husband since the District Administration Office Nuwakot did not register her application and denied to provide it orally. The written responses contended that, since the

petitioner has not duly registered the application form, and Interim Constitution of Nepal, 2007 and Nepal Citizenship Act, 2006 have no provision of providing citizenship by descent from the name of husband and therefore, the writ petition should be quashed.' First of all, to consider about the written response of the District Administration Office Nuwakot that the process was not initiated because the petitioner had not approached to the District Administration Office Nuwakot to submit application, however, from the copy of the letter of District Administration Office Nuwakot dated 2066/10/17 (February 3, 2011) written to District Administration Kathmandu and latter's response in that respect enclosed in the case file it has been found that the petitioner has submitted the application to the District Administration Office Nuwakot.

When a person seeking service comes to the office and submits application thereof, it is the responsibility of the concerned government official to take necessary action including the registration of the application. If the application does not fulfill the necessary procedure or does not enclose the necessary document the office also has the power to endorse and return back the application instructing him or her to come after fulfilling necessary procedure and enclosing necessary documents. However, such procedure has not been adopted in regard to the petitioner. From the statement of the petitioner that the application had been returned without registering it and the statement of the written response of the District Administration Office Nuwakot that there is no any record of citizenship of the applicant, it has been obvious that the application of the petitioner had been returned

to her without registering it. Therefore, the District Administration Office Nuwakot has not discharged/ fulfilled its duty and responsibility of registering the application and initiating necessary action over it. Going through the documents enclosed in the case file, from the letter of District Administration office, Nuwakot dated 2068/03/09 (June 23, 2011), Ref. No 2092 and the copy of the application, it has been obvious that the application mentioned in the writ petition had been submitted by the petitioner on 2067/12/7 (March 21, 2011). After the petitioner has submitted the application enclosing necessary documents for obtaining citizenship certificate, the District Administration Office Nuwakot has to take necessary decision as per the law over it. Therefore, an order of Mandamus has been hereby issued in the name of District Administration Office Nuwakot to verify and register the application submitted by the petitioner Nina Tamang for obtaining citizenship certificate, following the necessary legal procedure in case she comes to do so and for taking necessary action whatever has to be taken pursuant to Article 8(2) (b) of the Interim Constitution of Nepal 2007 and Nepal Citizenship Act, 2006. The District Administration Office Nuwakot shall be notified about it and the case file shall be handed over as per the rule after writing off the record of this writ.

I concur with the above opinion

Honorable Justice

Bench Officer: Ishwor Parajuli

Computer: Mandira Ranabhat

Done on Wednesday the 27th day of the month of Poush of the Year 2068 (January 11, 2012)

Supreme Court, Division Bench
Honorable Justice Kalyan Shrestha
Honorable Justice Gyanendra Bahadur Karki
Order
067-WO-1249
Subject: Mandamus

Sitadevi Adhikari, resident of ward No. 01 of Bhandara VDC of Chitwan District	1
Raju Shaiyad Mohammad resident of ward No. 01 of Bhandara VDC of Chitwan District ...	1
Advocate Mira Dhungana for own self and authorized representative of Forum for Women, and Legal Development situated at ward No. 11 Thapathali of Kathmandu Metropolis of Kathmandu district	1
Advocate Susma Gautam, for own self and authorized representative of Forum for Women, and Legal Development situated at ward No. 11 Thapathali of Kathmandu Metropolis of Kathmandu district	1
Advocate Sima Dhimi, for own self and authorized representative of Forum for Women, and Legal Development situated at ward No. 11 Thapathali of Kathmandu Metropolis of Kathmandu district	1
Advocate Muna Upadhyaya, for own self and authorized representative of Forum for Women, and Legal Development situated at ward No. 11 Thapathali of Kathmandu Metropolis of Kathmandu district	1
Advocate Lokhari Basyal, for own self and authorized representative of Forum for Women, and Legal Development situated at ward No. 11 Thapathali of Kathmandu Metropolis of Kathmandu district	1
Vs.	
The Office of the Prime Minister and Council of Ministers, Government of Nepal Singhadurbar, Kathmandu	1
Home Ministry, Government of Nepal Singhadurbar, Kathmandu	1
Ministry of Law and Justice, Government of Nepal Singhadurbar, Kathmandu	1
District Administration Office, Chitwan	1

The brief facts and decision of the present writ petition filed under the extra-ordinary jurisdiction of this court as per Articles 32 and 107 (2) of the Interim Constitution of Nepal, 2063 are as follows.

1. Petitioners' descriptions of writ petition:

The applicant organization is an organization established with the purpose of the welfare of the womenfolk as well as to safeguard the human rights

as a whole. We are also the legal professionals who are raising the voice continuously for the sake of women's rights and human rights. With the status of Nepalese citizens, we have *locus standi* to acquire the right of constitutional remedy on the present issue as per Articles 32 and 107 of the Interim Constitution of Nepal, 2063. Of the applicants, I, Sita Devi Adhikari, was married to an Indian citizen, Phool Mohammad, a resident of Silang, India in

2020 B. S. (1963/64 A.D.) and after staying together with the husband in Silang, I have been residing by arriving at Bhandara V.D.C. of Chitwan District since 2024 B.S. (1967/68 A.D.). In this situation, my eldest son, Raju Mohammad (Shaiyad) was born on the date of 2025/3/2 (June 15, 1968 A.D.). We, husband and wife too, have been continuously residing along with the family since 2028 B.S. (1971/72 A.D.) by arriving at Bhandara V.D.C., Ward No. 1.

Meanwhile, my husband died on date 2045/2/5 (May 18, 1988 A.D.). Though the children, born after matrimonial relationship of a Nepalese citizen, who have obtained Nepalese citizenship, with a foreign man, have the right to obtain naturalized citizenships as per Article 8 (7) of present Interim Constitution of Nepal, 2063, Clause 5 (2) (3) of Nepal Citizenship Act, 2063 and Rule 7 (1) (3) of Citizenship Rule, 2063, due to the reason that the Government of Nepal, Home Ministry has postponed the aforementioned process of conferring the citizenships, without providing any written notice, I, the applicant, Sita Devi, have been deprived of the right to get my children provided with Nepalese citizenships. Of the applicants, I, Raju Saiyad Mohammad, was born in Chitwan District, Bhandara V.D.C., Ward No. 5, Padariya, have been continuously living at the same place up to now, and have got education and instruction, and have been exercising the right of voting without obstructions. On date 2064/11/6 (February 18, 2008 A.D.), after fulfilling all the legal processes from District Administration Office, Chitwan, the application, which I had furnished to obtain the Nepalese naturalized citizenship as a child of Nepalese citizen mother and foreign father, was presented in the Home Ministry on date 2064/11/29 (March 12, 2008 A.D.) for the sake of decision. Since Home Ministry has not made any decision for a long time on the issue of whether I am or am not supposed to obtain Nepalese citizenship, improper restriction has been put up upon the constitutional right conferred by the present Constitution and the legal right conferred by Nepal Citizenship Act. Besides the right of employment of mine, the applicant's also, I have been deprived of the rights of personal identity and other basic rights of human rights also, including the right of acquisition, possession, purchasing and selling of properties.

In Sub-Article (7) of Article 8 of the Interim Constitution, 2063, there is a constitutional provision as "Despite whatever has been written elsewhere, in connection to the person born from a Nepalese woman who has got married to a foreign person if he/she has permanently settled down in Nepal upon being born in Nepal and if he has not obtained the citizenship of the foreign country on the basis of father's citizenship, he/she can obtain naturalized citizenship of Nepal as per

prevailing law." Likewise, Article 13 has conferred the Nepalese citizens the rights relating to equality. Instead of being provided with the citizenship, unequal treatment has been exerted upon me. Clause 5 (2) (3) of Nepal Citizenship Act, 2063 has continued the aforementioned constitutional provision. As per the aforementioned constitutional and legal provision, a person born from a Nepalese mother and a foreign father can obtain naturalized citizenship, whereas, on the other hand, making a provision that a child born from a Nepalese father and a foreign mother shall be a citizen on the basis of descent, by making a woman's matrimonial status a base, women are deliberately deprived of the right of equality of being allowed to get their children provided with citizenships; moreover, without providing any information upon the application furnished as per the present constitutional and legal provisions, we, the petitioners, have been made the captives of indecision due to the act of the opponent to keep it in *status quo*, without making any decision. In the data up to the date of 2067/7/25 (November 11, 2010 A.D.), though 134 applicants, like me, Raju Mohammad, also have furnished applications in order to obtain naturalized citizenships; the aforementioned fact is justified with the government's making no decision till present. The treaties and agreements ratified by Nepal by being Nepal a Party are found to have realized the right of citizenship as a human right. In this context, the following provisions are seen as special importance:

- (A) Stating that each person has the right of citizenship, Universal Manifesto Relating to Human Rights, 1948 has made the provision stating that no person shall be deprived of the right of citizenship wantonly.
- (B) Article 24 of The International Convention on Civil and Political Rights, 1966, has made the provision that each child shall have the right of nationality after it is born. Moreover, Article 16 of the aforementioned Convention stating that each person shall have the right to obtain recognition as a person everywhere before the law, Article 26 of the aforementioned Convention has mentioned the matter of guaranteeing the effective protection against inequality.
- (C) Sub-Article (1) of Article 9 of the Convention on Elimination of All Kinds of Discriminations Against Women, 1979 has ensured the right of the women to obtain their original nationality due to marriages or any other reasons as same as men. For the sake of acquisition and termination of the citizenship, this Convention has realized the matter that women are not

supposed to be discriminated on the basis of matrimonial status. In the conclusion of the second and third periodic reports of Nepal for the sake of the Convention on Elimination of All Kinds of Discriminations Against Women,, the Committee for the Elimination of Discriminations Against Women, Article 9 of the aforementioned Convention on Elimination of all Kinds of Discriminations Against women, and by mentioning the matter that the constitutional provisions made on the issue that women are allowed to provide citizenships for their foreign husbands and children have been inconsistent, also appealed the Party Countries stating to repeal or amend the constitutions for the sake of abolition of the discriminations against women to be present pertaining to the citizenships.

- (D) Article 7 of Convention relating to Child Rights, 1979 has ensured the matter that children shall obtain the right of getting registered upon being born and their right of nationality after getting birth.

The aforementioned international treaties and agreements ratified by Nepal without any reservations, as well, have mentioned the matter that the state is not supposed to behave differently and to discriminate by classifying in the subjective matters including genders, colors, religions, castes etc. while treating its citizens on the issue relating to nationality and citizenships. Our constitutional and legal provisions as well as the aforementioned treaties and agreements have never imagined of the situation that the person who has permanently settled down upon being born in Nepal shall be deprived of the right to obtain citizenship. However, the act of delay in conferring me the citizenship by the Home Ministry has done the unjustified act of rendering stateless by depriving of the right of obtaining citizenships of including the other persons like me, as well. Such documents are legally mandatory for the Party- Countries. As per Articles 26 and 27 of Vienna Convention on the Law of Treaties, provision has been made that the Party-countries shall have to honestly abide by the treaties, and laying claim stating that abiding by the treaties cannot be done due to the reasons of their national laws. Under the advisory jurisdiction, International Court of Justice has expressed the opinion that international law is supposed to be valid if national and international laws are inconsistent.

It is the responsibility of the Government of Nepal to protect and promote the rights guaranteed by all the aforementioned documents of international human rights relating to citizenships, in which Nepal has become a Party. If conferring or not conferring

naturalized citizenships is a discretionary power of the state, then it shall negatively affect upon the Nepalese mothers and their children, and the children of such mother are likely to be rendered into identity-less and stateless conditions. On the one hand, there is the situation that while being deprived of the citizenships, personal identity, employment, to achieve higher education, to generate income and earn and bequeath properties shall be complicated and to do any fundamental acts, whereas, Nepalese women like me, Sita Devi Adhikari, who have got married to foreign men can provide naturalized citizenships for their children as per the Interim Constitution of Nepal and Nepal Citizenship Act, 2063 and due to not making decisions upon the applications furnished by persons like me, Raju Saiyad Mohammad, of the petitioners, who are children and have the base of obtaining citizenships, the persons are being deprived of the right to live with dignity and are being victimized with other discriminations; hence, livelihood is being carried on in the condition of statelessness. Hence, order including Mandamus whichever is required should be issued on the names of the opponents stating to implement or get the naturalized citizenships implemented in practice, which are to be issued on the basis of the provisions made in Article 8 (7) of the Interim Constitution of Nepal, 2063, Clause 5 (2) (3) of Nepal Citizenship Act, 2063. Moreover, Mandamus order should be issued on the name of Home Ministry stating to make decision or get the decision to confer the naturalized citizenships made upon the application furnished by me, Raju Shaiyad Mohammad, of the petitioners, on the date of 2064/11/29, stating “naturalized citizenship should be granted” as per Article 8 (7) of the Interim Constitution of Nepal, 2063, Clause 5 (2) (3) of Nepal Citizenship Act, 2063, and Rule 7 (1) (3) of Citizenship Rule, 2063, as well as upon the applications of all the applicants who have applied for the naturalized citizenships. The writ petition claimed has been as above.

1. Preliminary order issued by this Court on date 2068/3/29/4 (Wednesday, July 13, 2011 A.D.) :

Send notice on the name of the opponents stating to send affidavits through the Office of Attorney General, and the present case is seen to have included the subject matter relating to naturalized citizenship and is supposed to be decided immediately; hence, submit by awarding preference.

2. Descriptions of Affidavits presented on behalf of the opponents, the Government of Nepal, the Office of the Prime Minister and the Council of Ministers :

This Office has no any involvement on the issue claimed by the opponent petitioner. Since there

is no base and reason to maintain this Office an opponent; it is not right to issue order on the name of this Office as per the claim. While looking upon the claim of the female-petitioner, though the female-petitioner herself is a Nepalese citizen, it is seen that the children, who are born from her after she has got married to a foreign citizen, are supposed to fulfill three basic conditions as per Sub-clause (7) of Article 8 of the Interim Constitution of Nepal, 2063. First, that person must have been born in Nepal; second, must be continuously residing in Nepal since getting birth; and third, must justify the convincing base of the matter that he/she has not obtained the citizenship from the father's country on the basis of his/her father's citizenship. If the children born from the Nepalese woman who has got married to a foreign man arrive to make demand of the Nepalese citizenship certificates by fulfilling the aforementioned conditions and following the processes and procedures prescribed by law, citizenships shall have to be conferred by the authorized body or lien on posts upon fulfilling the processes and procedures of the law. The petitioner has not been able to lay claim, stating that she has fulfilled the aforementioned conditions, processes and procedures but the citizenship certificate has been refused to be conferred or has not been conferred by authorized body or lien on posts. In this situation, Mandamus cannot be issued stating to confer the citizenship certificate as per her claim. Hence, from including the aforementioned base and reason, the order as per claim cannot be issued on the name of this Office; hence, the writ petition should be dismissed.

3. Description of the affidavit presented on behalf of Ministry of Law and Justice :

Make decision or get the decision to confer the naturalized citizenship as per the constitution and law of Nepal made immediately is seen to have contained in the opponent's petition pleading. As per the Government of Nepal, Work Division Rule, 2064, the issue relating to citizenships does not fall under the jurisdiction of this Ministry; hence, the writ petition filed by making this Ministry an opponent without base and reason has been futile, hence, should be revoked.

4. Description of the affidavit presented on behalf of District Administration Office, Bharatpur, Chitwan :

The petitioner, Sita Devi Adhikari, has submitted the application asking for the naturalized citizenship for the sake of the son, Raju Saiyad Mohammad, born from Indian citizen; but the power to confer the aforementioned citizenship vested in Home Ministry; hence, the file as per register along with her application contained with documents was sent

to Home Ministry for the sake of decision through the letter of this Office of the date of 2064/11/29 (March 12, 2008 A.D.) and no information pertaining to the action carried out by the Home Ministry is seen to have been received in this Office, and no information about that is seen to have been provided to this Office by the applicant as well; hence, the writ petition against this Office is revocable; it is humbly requested to get it revoked.

5. Description of the affidavit presented on behalf of Home Ministry :

There are provisions in Sub-clause (2) of Clause 5 of Nepal Citizenship Act, 2063, that in connection to the sons and daughters born from Nepalese citizen woman married with foreign citizen, if he/she has been permanently residing in Nepal upon being born in Nepal, and if he/she has not obtained the citizenship of a foreign country on the basis of father's citizenship, he/she can be conferred naturalized citizenship as prescribed, and in Sub-clause (3) that the person, who wants to obtain the naturalized citizenship as per Sub-clause (2), shall have to furnish application before the official prescribed, including the documents i.e., copy of mother's Nepalese citizenship, recommendation of the Village Development Committee or Municipality concerned, disclosing the description of residing permanently upon being born in Nepal, proof of not obtaining the citizenship of any foreign country on the basis of father's citizenship. And, in Rule 7 of Nepal Citizenship Rule, 2063, provision of other procedures has been made for obtaining the naturalized Nepalese citizenship. As per the aforementioned legal provisions, the application submitted by the petitioner is under investigation; hence, only after the investigation, necessary decision shall certainly be made on whether or not to confer the naturalized citizenship to the petitioner; hence, it is not supposed to enter into sensitive scope like writ. Hence, the present writ petition is revocable; it should be revoked.

6. Pleadings of legal professional on behalf of petitioner and opponent :

In the present writ petition that has been submitted by being inducted in the cause lists as per Rule, learned advocates, Mira Dhungana and Susma Gautam, present on behalf of the petitioner, presented the pleadings with making plea that if citizenship has not been obtained from a foreign country on the basis of the father's citizenship, if the child is residing in Nepal upon being born in Nepal from the matrimonial relationship between the Nepalese citizen woman and foreign citizen man, there is no debate that he/she can obtain Nepalese naturalized citizenship as per the Interim Constitution of Nepal, 2063. Sub-clauses (2) and

(3) of Clause 5 of Nepal Citizenship Act, 2063 has also furthered the aforementioned provision. Petitioner, Raju Shaiyad Mohammad, furnished application in District Administration Office, Chitwan, on date 2064/11/06 (February 18, 2008 A.D.) asking for naturalized citizenship and the District Administration Office, Chitwan sent the file along with the aforementioned application to Home Ministry on date 2064/11/29 (March 12, 2008 A.D.) for the sake of decision, but no decision has been made by Home Ministry till now. As no decision has been made by the opponent Ministry, there is the situation that the petitioner has been deprived of the right to obtain naturalized citizenship as per the Constitution and law. The Government of Nepal cannot stay away from letting the children of a Nepalese citizen use the right of citizenship conferred by the Constitution and law. By not even making any decision till many years of furnishing the application along with necessary evidence for obtaining the citizenship, the Home Ministry has made great injustice upon the petitioner and other persons like the petitioner who have furnished applications. Consequently, by being stateless, the persons including the petitioner are compelled to undergo lots of difficulties for the sake of consuming the services and facilities allowed by the state. Such behavior shown against the petitioner by the Government of Nepal is not only unjustifiable but also unconstitutional and against the law as well. Hence, Mandamus order should be issued on the name of the opponent, the Government of Nepal, stating to implement or get the provisions relating to naturalized citizenship to be conferred by the Interim Constitution of Nepal and law implemented in practice, and to confer or get the naturalized citizenship conferred to the persons including the petitioner as soon as possible.

Learned deputy-attorney general, Mr. Yog Raj Baral, present on behalf of the opponent, the Government of Nepal, presented the pleading stating that there is situation that delay has been made to decide not to confer the petitioner the naturalized citizenship. Just a delay in decision is caused because the investigation work upon the application furnished by the petitioner has not been concluded. The Government of Nepal is prepared to confer citizenship to the petitioner if, after the investigation, he is seen to be qualified to obtain the naturalized citizenship. Hence, writ petition should be revoked.

7. Order of this Court :

Considering the aforementioned pleadings, upon studying the evidence documents attached with the document file, it is seen that justice is supposed to be decided pertaining to the following issues.

- (1) Is or is not there the situation of the delay caused by the Government of Nepal, Home Ministry to decide on the issue whether Raju Shaiyad Mohammad of the writ petitioners can be conferred the Nepalese naturalized citizenship or not?
- (2) Is any order supposed to be issued in the present writ petition including in connection to other persons claimed in the petition, besides Raju Shaiyad Mohammad of the writ petitioners or not ?
- (3) Does the condition to issue order as per petitioners' claim exist or not?

First of all, let's consider about the first issue determined for the sake of decision. In this, the petitioners' principal petition claim is seen to have been that of the petitioners, Raju Shaiyad Mohammad is a person qualified to obtain the Nepalese naturalized citizenship as per the Constitution of Nepal, 2063 and Nepal Citizenship Act, 2063, and because the provisions contained in the Constitution and in law for the naturalized citizenship to be conferred could not be practically implemented, other persons including the petitioner have been deprived of obtaining the naturalized citizenships. Hence, Mandamus should be issued on the name of Home Ministry, stating to practically implement the aforementioned constitutional and legal provisions and to decide to immediately confer the citizenships to other persons including the applicant who have applied for the naturalized citizenships. In the affidavit presented by the opponent, Law and Justice Ministry, it has been mentioned that it has no jurisdiction on the matter of citizenship. In the affidavit presented on behalf of Home Ministry, description is seen to have been mentioned that the documents submitted by the writ petitioner, Raju Shaiyad Mohammad, along with the application asking for naturalized citizenship are under investigation and after the investigation, necessary decision shall certainly be made on whether the applicant is supposed to be conferred the naturalized citizenship or not; hence, intervention is not supposed to be made through the writ scope presently.

The provisions contained in the Interim Constitution of Nepal, 2063 and Nepal Citizenship Act, 2063 on the issue of obtaining Nepalese naturalized citizenship by the children born from Nepalese citizen woman married with a foreign citizen are as follows:

- Sub-Article (7) of Article 8 of the Interim Constitution of Nepal : Despite whatever has been written elsewhere, in connection to the person born from the Nepalese citizen woman

married with foreign citizen, if he/she was born in Nepal and has permanently resided in Nepal and has not obtained citizenship of the foreign country on the basis of father's citizenship, he/she can obtain naturalized citizenship of Nepal as per prevailing law.

- Clause 5 (2) of Nepal Citizenship Act, 2063 : In connection to sons and daughters born from Nepalese citizen woman married with foreign citizen, if he/she was born in Nepal and has permanently resided in Nepal and has not obtained citizenship of the foreign country on the basis of father's citizenship, he/she can be conferred naturalized citizenship of Nepal as prescribed.
- Sub-Clause (3) of the same Act : The person who wants to obtain naturalized citizenship as per Sub-Clause (2), shall have to furnish application before the prescribed official by including the following documents :
 - (A) Photocopy of mother's Nepalese citizenship,
 - (B) Recommendation of village development committee or municipality concerned disclosing the description of permanently residing upon being born in Nepal,
 - (C) Proof of not receiving citizenship of any foreign country on the basis of father's citizenship.

By fulfilling the aforementioned constitutional and legal conditions, the writ petitioner furnished the application for the sake of naturalized citizenship in District Administration Office, Chitwan on date 2064/11/06 (February 18, 2008 A.D.) along with necessary evidence, whereas, after examining the things to be examined, the aforementioned Office is seen to have sent the necessary documents along with the petitioner's application to the Home Ministry on date 2064/11/2 (February 14, 2008 A.D.). In the affidavit submitted by the Home Ministry pertaining to that, it is seen to have been mentioned that the documents including the petitioner's application are under investigation and necessary decision shall have to be made on whether the petitioner is supposed to be conferred the naturalized citizenship or not only after the investigation. Even making calculation of the date of the present writ petition filed from the date of the application of the applicant, Raju Shaiyad Mohammad, asking for naturalized citizenship, which is said to have been sent by District Administration Office, Chitwan, to the Home Ministry on the date of 2064/11/29 (March 12, 2008 A.D.), the situation is seen that 3 months have already gone. The statement of the Home Ministry that the application has been under investigation till

such a long time indicates the slight delay remained in government functions and actions.

Now, while considering towards the second issue, the petitioners are seen to have made demand that even in connection to the persons like Raju Shaiyad Mohammad of the petitioners who have furnished applications for the sake of naturalized Nepalese citizenships as well, the Home Ministry has not made any decision till now; hence, order of Mandamus should be issued on the name of the opponent, the Home Ministry, stating to immediately confer the naturalized Nepalese citizenships in connection to such persons as well. One whose welfare is affected by the functions and actions of the Home Ministry is likely to come to ask for the remedy oneself. The situation is also not seen that the person who is supposed to come to make demand for remedy, stating that the rights are affected. In such situation, only on the basis of the petitioners' claim in the present writ petition in general, stating that Mandamus should be issued in connection to the other persons who have not come to make demand for the remedy, there is not situation that Mandamus can be issued on the opponent, the Home Ministry, through the present petition in connection to such person.

Now, while looking for decision upon the third issue determined to be decided, jurisdiction to make decision upon the application furnished by Raju Shaiyad Mohammad of the petitioners, to District Administration Office, Chitwan, stating that naturalized Nepalese citizenships, is seen to have vested in the Home Ministry. In the affidavit submitted by the Home Ministry, it is mentioned that investigation is still going on upon the aforementioned application. From this, the situation is clearly seen that the Home Ministry has committed unjust delay in making decision on the issue as per petition claimed. The analysis made above has justified about this, as well. The principal claim held in the writ petition is that Mandamus should be issued on the name of Home Ministry, stating to confer the naturalized Nepalese citizenship to Raju Shaiyad Mohammad of the petitioners as soon as possible. Decision can be made only after the investigation on the issue of that claim. Moreover, it is seen that after investigating, the right to make decision on this issue is vested in the Home Ministry itself. As per the principle of separation of powers also, it is not right for the judicial sector to presently state to decide to confer naturalized citizenship to the petitioner, Raju Shaiyad Mohammad, by intervening through writ on the issue remained pending and under investigation under the jurisdiction of executive body. However, the functions and actions to be accomplished by the opponent, Home Ministry, remained as a body that

is supposed to take up public accountability, must be delay-less, transparent and responsible.

Hence, from the aforementioned analysis, the situation is seen that the Home Ministry has delayed to make decision on the issue of the claim held in the writ petition; hence, it is decided that order of Mandamus is to be issued on the name of the opponent, the Home Ministry, stating that by accomplishing the work as soon as possible if the work of investigation upon the application for the naturalized Nepalese citizenship furnished by the writ petitioner, Raju Shaiyad Mohammad, is still remaining, to make decision as soon as possible on the issue of what, whether or not the citizenship

can be conferred to him. Provide the information of this order for including the opponent, the Home Ministry, through the Office of the Attorney General. Submit the document file as per Rule by striking off the record of case file.

Justice

I am with afore stated opinion

Justice

Bench Officer: Baburam Subedi

Computer: Kalpana Bartaula

Done on: 2070/03/26/04 (Wednesday, 10th July, 2013)



Chaitra 10, 2070 (14th March, 2014)

Supreme Court

Division Bench

Hon. Justice Ms. Sushila Karki

Hon. Justice Mr. Prakash Wosti

Order

069-WO-880

Subject: Mandamus

Mr. Bhola Nagarkoti of Chalnakhel Village Development Committee (VDC), Ward No. 08, Kathmandu district	1	
Ms. Shanti Nagarkoti, of Chalnakhel Village Development Committee (VDC), Ward No. 08, Kathmandu district	1	Petitioner
Vs.		
Office of the Prime Minister and Council of Ministers, Government of Nepal, Singha Durbar, Kathmandu	1	
Ministry of Home Affairs, Government of Nepal, Singha Durbar, Kathmandu	1	
District Administration Office, Kathmandu	1	
Chief District Officer, District Administration Office, Kathmandu	1	Respondent

The brief facts and verdict in this writ petition duly submitted before this Court as per Articles 32 and 107(2) of the Interim Constitution of Nepal, 2007 are as follows:

We, the petitioners have been residing permanently in Chalnakhel VDC, Ward No. 08, Kathmandu district being born therein. We are the offspring of Madhav Nagarkoti and Dhana Nagarkoti. The petitioners Bhola Nagarkoti and Shanti Nagarkoti are born on 2048-10-07 (31-01-1992) and 2049-11-10 (21-02-1993) respectively. Our father has been missing since 2050 Bhadra (September, 1993) and there is no information on his whereabouts till date. Our single mother Dhana Nagarkoti brought us up. We the petitioners are wishful of making an identity by acquiring citizenship from our mother's name. Desirous of duly obtaining citizenship certificate, as we approached the District Administration Office, Kathmandu on 2069-09-12 (27-12-2012) accompanied by a recommendation that our father is indeed missing, the Chief District Officer retorted that no citizenship certificate may be provided in the absence of father, and ordered in our

application to perform necessary act upon inquiring the concerned parties. Still, the process did not go ahead. Right to citizenship has been enshrined in the Interim Constitution of Nepal, 2007 as well as the international treaties and conventions. At our birth, as our mother was a citizen of Nepal, we are entitled to receive citizenship by descent even by the constitutional and statutory provisions. Conversely, we have been denied with the freedom of choice on whose name between the father and mother shall we desire to obtain our identity, as well as the constitutional and statutory rights conferred, by being flatly declined to be given citizenship when we approached to attain citizenship in our mother's name. Hence, we pray that an order of mandamus or any other similar, needful order be issued in the name of respondents causing them to issue us, the victim petitioners, citizenship certificates by descent, in the mother's name. The writ petition read as above.

What has happened in this connection? Why an order as sought by the petitioners need not be issued? A show cause notice is hereby issued in the

name of respondents to file a written reply via the Office of Attorney General within 15 days of receipt of this notice, excluding the travel period. Let the Office of Attorney General be also intimated of this order and let the case be submitted upon the receipt of written reply or upon expiry of the above deadline.

The order by as Single Bench of this Court read that: As this case seems to be appropriate for speedy settlement upon considering the gravity of subject matter, preferential status for fixing court hearing date is hereby granted to the matter as per Rule 63(3) (f5) Supreme Court Rules, 1992.

The written reply filed by the Ministry of Home Affairs read that: The writ petition of respondents is faked. As the entire citizens are endowed with a natural right to obtain citizenship as per the laws, the Ministry has already issued a circular to its subordinate offices on 2068-05-05 (22-08-2011) to issue citizenship certificate even in the name of mother by fulfilling all the due process of law. As no act of this Ministry has breached the fundamental rights of the petitioners, an interim order and writ need not be ordered in case of this Ministry as demanded in the petition. The writ is quashable.

Likewise, the written reply of Office of the Prime Minister and Council of Ministers, Government of Nepal read that: When the basic fact that why this Office has to be made respondent on account of which duty it failed to perform in pursuance of Constitution and laws, this petition is quashable in the first instance as this Office lacks any type of affinity with the matter of dispute. With respect to the issue of awarding citizenship certificate in the name of mother, as a directive order was issued by the Court in the name of Ministry of Home Affairs also, in a writ petition involving Petitioner Sabina Damai Vs. this Office et.al. (Writ No. 0703 of the year 2067) which instructed to provide citizenship of Nepal to the petitioner from her mother's name as per the laws, this Office dispatched a letter to the Ministry of Home Affairs vide Ref No. 289, dated 2068-03-06 (20-06-2011) reminding the implementation of the order. Consequently, the Ministry on 2068-05-05 (22-08-2011) issued a circular to the entire District Administration Offices vide a letter whose C.C copy was also received at this Office. Hence, mandamus need not be ordered over the same issue, as such, let the writ petition of petitioners be struck down.

The written reply of Chief District Officer on behalf of District Administration Office, Kathmandu also read that: Citizenship by descent has been provided effortlessly in the event of filing a valid application by enclosing the documents as per Sections 3 and 8(1) of the Nepal Citizenship Act, 2006, so as to obtain Nepali citizenship certificate. Without submitting a relationship verifying certificate that would have

verified that the petitioners are indeed offspring of the said father or other proof, the petitioners have resorted to filing a false petition alleging that the District Administration Office orally declined them to provide citizenship certificate. Hence, I pray that the writ petition be struck down.

The Bench studied the documents enclosed in case file in the present case that was duly submitted this Bench as per the daily cause list.

Learned Advocate Mira Dhungana, who was present on behalf of the writ petitioners argued that: The petitioners are offspring of parents Madhav Nagarkoti and Dhana Nagarkoti. The petitioner have already completed 16 years of age having born on 2048-10-07 (31-01-1992) and 2049-11-10 (21-02-1993) respectively. Both are offspring of Nepali citizens. Their father went missing post their birth. Article 8 (2b) of the Interim Constitution of Nepal, 2007 expressly provides that a person whose father or mother was a Nepali citizen at the time of his or her birth shall be a Nepali citizen by descent. The said constitutional arrangement is also imbibed by Section 3(1) of the Citizenship Act, 2006 as well as Rule 3(1) of the Citizenship Rules, 2006. When the liabilities incurred by the international treaties and conventions concerning nationality and citizenship have been domesticated into the Nepali laws, as the writ petitioners seem to be son and daughter of Nepali citizen mother, they have to attain citizenship certificate, as soon as they fulfill the age and procedure prescribed by the law. In a similar writ petition involving Petitioner Sabina Damai Vs. Ministry of Home Affairs et.al. (Ne. Ka. Pa. 2068, Issue 2, Decision No. 8557, p. 247) a mandamus has been issued by the Court in the name of District Administration Office, Kathmandu for providing a daughter born in Nepal from a Nepali citizen mother, citizenship of Nepal as per the laws. Hence, as the writ petitioners in this case have been offspring of Nepali parents, let the Court issue a mandamus in the name of respondents causing them to grant them citizenship by descent in the name of their mother.

Learned Joint Government Attorney Gopal Prasad Rijal, present on behalf of respondent Government of Nepal also, argued that: Government of Nepal is not involved in meting discrimination to the Nepali citizens like the petitioners in granting citizenship. The petitioners are first required to fulfill some procedural formalities in order to obtain citizenship. They were told that they shall be awarded citizenship once they produce relation verifying certificate that would verify that Madhav Nagarkoti whom they have cited as their father, is indeed one and other proof. Currently, they have failed to show who their father is in the absence of submission of Nepali citizenship certificate of their father that would prove that he was indeed a Nepali

national and a relationship verifying certificate that would signify that he was indeed the father of these petitioners. In such a void, they have lied in filing writ petition that they have been denied of citizenship. Hence, this writ petition is quashable.

Upon mulling over decision after listening to the above arguments, a decision has to be made on whether an order as sought in the present case of writ petition needs to be issued or not.

Upon delving at the verdict, a ruling has to be pronounced on whether an order as sought in the present case of writ petition needs to be issued or not which includes the demand for a mandamus for providing citizenship certificate by descent from the name of mother to the victim petitioners as they have been orally denied one when they tried to obtain citizenship from the name of mother since their father has been missing.

It is shown from the recommendation of Chalnakhel VDC of Kathmandu district, birth registration certificates and letter that the petitioners are offspring of Madhav Nagarkoti and Dhana Nagarkoti who have been permanently residing at Chalnakhel VDC, Ward No. 08 of Kathmandu district who were also born and raised there. From their birth registration certificates, it is seen that the petitioners Bhola Nagarkoti and Shanti Nagarkoti are born on 2048-10-07 (31-01-1992) and 2049-11-10 (21-02-1993) respectively. Though their father's name is stated as Madhav Nagarkoti, both the petitioners and their mother have conceded that he is still missing. In its written reply, District Administration Office, Kathmandu has asserted that as soon as the petitioners file an application for citizenship accompanied by the photocopies of citizenship certificates of their parents Madhav Nagarkoti and Dhana Nagarkoti and documents that would verify that the parents were indeed spouses and that the petitioners have been their offspring indeed, Nepali citizenship certificates by descent shall be provided to them. There is a situation here that the petitioners have been unable to prove that who actually their father is as they have failed to produce the Nepali citizenship certificate of their father that would have established his nationality and a relationship verifying certificate that would confirm that he was the father of the petitioners as a matter of fact. Both these papers have to be mandatorily supplied as per the Nepal Citizenship Act, 2006 and the Rules. The petitioners seem to have failed to submit a proof that would authenticate that their father Madhav Nagarkoti and mother Dhana Nagarkoti are indeed spouses. As there is absence of proof to this respect and the father Madhav Nagarkoti has also gone missing, the District Administration Office, Kathmandu, in its written reply has contended that it would grant the petitioners, citizenship certificate provided that they shall file an application

accompanied by documentary evidence that Madhav Nagarkoti is actually their father. In this light, it has to be adjudged whether the petitioners are entitled to obtain citizenship certificate or not till that formality is met with.

Here, it seems that the petitioners Bhola Nagarkoti and Shanti Nagarkoti are offspring of Dhana Nagarkoti. The mother of petitioners, viz. Dhana Nagarkoti has conceded that her husband Madhav Nagarkoti has been missing since Bhadra of 2050 (September, 1993) and there is no information on his whereabouts till date. From the writ petition and the corresponding written replies, it is known that the petitioners had applied for citizenship from the mother's name at the District Administration Office, Kathmandu. Through the recommendation of Chalnakhel VDC of Kathmandu district, birth registration certificates, it is held that the petitioners are offspring of Dhana Nagarkoti who was born at Kirtipur Municipality, Ward No. 15, Kathmandu district and who has received a citizenship certificate by descent vide No. 052/2163 on 2063-12-09 (23.03.2007) by stating her permanent address as Chalnakhel VDC, Ward No. 08 of Kathmandu district. Though the name of father has been cited, as there is nothing to prove that the father and mother were indeed in a relation, the petitioners have been denied Nepali citizenship certificate by far under the pretext that they have failed to produce their relation verifying certificate with the said father and that they shall be granted one only when they produce document of relationship verification between the father and mother as well as father and offspring. As such, this writ petition has been filed.

Upon observing the provisions in Constitution of Nepal as regards attainment of citizenship, Part 2 of the Interim Constitution of Nepal, 2007 has made some arrangements. In this sense, Article 8(1), Part 2 of the Constitution provides that: *At the commencement of this Constitution, the persons who have acquired the citizenship of Nepal and who are eligible to acquire the citizenship by virtue of this Part shall be the citizens of Nepal.* Similarly, Article 8(2) lays down that: *At the commencement of this Constitution, the following persons who have their permanent domicile in Nepal shall be deemed to be the citizens of Nepal by descent:*

- (a) *any person who has acquired citizenship by descent prior to the commencement of this Constitution;*
- (b) *any person whose father or mother was a citizen of Nepal at his or her birth.*

The above constitutional provision has been managed by the statutory provision included in Section 3(1) of the Nepal Citizenship Act, 2006. In the event of presence of prerequisites prescribed by the citizenship laws, one may be able to obtain Nepali

citizenship certificate by descent. The present case has raised a question on whether one may be denied of right to acquire Nepali citizenship certificate only by virtue of his or her father having gone missing.

Article 8 (2b) of the Interim Constitution of Nepal, 2007 has prescribed father or mother rather than father and mother. The said article places or and not and after the term father. If it were father and mother instead, one would have not been able to gain Nepali citizenship certificate in this situation. However, as the Constitution has explicitly provided for father or mother, it is deemed that in the event any one between the father and mother is a Nepali citizen, such an offspring may well obtain Nepali citizenship certificate. This being the case, the respondents seem to have misconstrued and misinterpreted the express provision of Constitution by denying the petitioners of Nepali citizenship certificate. In a similar writ petition (Writ No. 067-WO-0703) involving Petitioner Sabina Damai Vs. Ministry of Home Affairs et.al. (Ne. Ka. Pa. 2068, Issue 2, Decision No. 8557, p. 247) a mandamus has been issued by the Court in the name of District Administration Office, Kathmandu for providing a daughter born in Nepal from a Nepali citizen mother, citizenship of Nepal as per the laws. In this case too, as the father is missing

and out of contact till date, and as it is shown from the photocopy of citizenship enclosed in case file that is authenticating that the mother of petitioners is a Nepali citizen and since it has also been corroborated that the petitioners are the offspring of a Nepali citizen Dhana Nagarkoti, a mandamus is hereby issued in the name of respondent District Administration Office, Kathmandu for providing Nepali citizenship certificate to the petitioners from their mother's name as per the laws. Let the respondents be intimated of this order via Office of the Attorney General. Let this case file be duly returned after writing it off the registry.

.....

(Justice)

I concur with the aforementioned opinion.

.....

(Justice)

Bench Officer: Lalkaji Shrestha

Computer by: Sabina Adhikari

Done on Monday, 2070-12-10-02 (Monday 24-03-2014)



Magh 26, 2071 (9th February, 2015)

Supreme Court, Division Bench
Honorable Justice Kalyan Shrestha
Honorable Justice Om Prakash Mishra
Order

070-WO-0932

Subject: Certiorari mixed Mandamus as well

On behalf of Nikita Gurung age 13 daughter of Dipti Gurung age 41 as guardian and for oneself as per Section of 51 Children Act, 2048, Dipti Gurung daughter of Late Dhan Bahadur Gurung, resident of ward No. 03 of Lalitpur Sub-metropolis of Lalipur District1 Petitioner
 Vs.

The Office of the Prime Minister and Council of Ministers, Government of Nepal,
 Kathmandu1
 Home Ministry, Government of Nepal, Kathmandu1
 Ministry of Women, Children and Social Welfare, Government of Nepal, Kathmandu1
 Ministry of Local Development and Federal Affairs, Government of Nepal, Kathmandu1 Respondent
 Lalitpur Sub-metropolis, Pulchok, Lalitpur1
 Office of ward No. 3 of Lalitpur Sub-metropolis, Pulchok, Lalitpur1
 District Education, Office, Kanibahal Lalitpur1

The brief facts and decision of the present writ petition filed under Articles 32 and 107 of the Interim Constitution of Nepal, 2063 are as follows.

I, the petitioner, gave birth to the daughter, Nikita, on date 2057/1/4 (16 April, 2000). I, the petitioner, myself also have not been able to identify her father. Presently, the daughter, Nikita Gurung, is studying at Red Bungalow School at Grade 9. Form has to be filled up for the sake of S.L.C. while studying at Grade 9. The situation is that District Education Office, Kanibahal, has sent the letter to Red Bungalow School stating that the form of SLC has to be sent to District Education Office; while sending the form, the copy of the daughter's birth registration certificate shall have to be sent along and the form registration without having the birth certificate attached shall be invalid. Thus, as there is no birth certificate of the daughter, the school has not been able to submit the daughter's form of SLC examinations to the District Education Office; hence, the Red Bungalow School, where the daughter is studying, is presently giving warnings

even to expel from the school if the birth certificate is not brought.

Taking the daughter together, when I went to the Office of Ward No. 3 of Lalitpur Sub-Metropolitan City, Lalitpur District, where we are living, to get the birth registered, by filling up the form of the information of the birth as per Schedule 2 of Birth, Death and Other Personal Events (Registration) Rule, 2034, we were refused to get registered. We were not given information pertaining to the other alternatives so as to be able to get the birth registered. After then, though I continued to go months after months to the aforementioned Office, taking the daughter along with me, birth was not registered and we were replied with chiding language, stating that daughter's birth would not be registered if there is no citizenship of the father; hence, as there is no other way out, I have been present taking the writ petition.

Thus, my daughter's birth has not been registered because there is no identity of father; hence, order including Mandamus, whichever is required, should

be issued to the opponent, the Office of Ward No. 3 of Lalitpur Sub-Metropolitan City, stating to register or get the daughter's birth registered under the name of mine, the petitioner's. Interim order also should be issued on the name of District Education Office, Kanibahal, Lalitpur, stating to accept without disapproving the SLC form of daughter, Nikita, despite having no birth registration. The writ petition reads as above.

Preliminary order of the Court:

Issue summon notice on the names of the opponents, stating that if order is not supposed to be issued as per the claim of the petitioner, submit the affidavit within 15 days, mentioning the base and evidence of this, excluding the time limit of the traveling after the date of this order received. To deprive a studying examinee of the opportunity of the examinations is not justifiable; hence, interim order has been issued in the names of the opponents, stating not to implement or get the letter of District Education Office of the date of 2071/3/19 (July 3, 2014 A.D.) implemented. Order of 2071/3/24 (July 8, 2014 A.D.) reads as above.

The writ petitioner has not come up to the Office of Ward No. 3 of this Lalitpur Sub-Metropolitan city. There is the situation that she neither has come to demand any notice and information nor has she filled up birth registration form; the petitioner's description of the writ petition is not right.

On the basis of Birth, Death and Other Personal Events (Registration) Act, 2033 and Birth, Death and Other Personal Events (Registration) Rule, 2034 and of the Directives on the Registration of Personal Events, 2067, given to Local Registrars by Local Development Ministry and of the circulars issued from time to time, registering the individual incidents is the legal duty of the Local Registration Officer. The opponent has not yet submitted to this Office by filling up the prescribed form. As per the petition of the writ petitioner, if there are conditions that her daughter, Nikita, was born due to accident; father's whereabouts have not been known; father's nationality has not been known; even if the nationality is known, whether citizenship has been obtained or not has not been known and so on, in the situation that application has been furnished to the Local Body concerned mentioning as per that, for the passage on what and how the Local Registrar can register the birth of such child, there is a way in the Act that the writ petitioner can get the remedy as per the decision of the Government of Nepal as well by making demand for the opinion and directives from the Chief Registrar appointed under Clause 3 of Birth, Death and Other Personal Events (Registration) Act, 2033. As per Clause 16 of Birth, Death and Other Personal Events (Registration) Act, 2033, there is also a situation that implementation

of the Act can be done under the right of the Government of Nepal to release the restriction. Without going towards this common remedy, the writ petitioner has come to the esteemed Court by bringing the writ petition along; hence, there is no condition to issue the order as per claim. As per legal provision, in the situation that even the opponent herself has accepted that there are legal restrictions and hurdles while registering the birth of those like the petitioner's, no action of affecting any constitutional right of the opponent has been committed by this Lalitpur Sub-Metropolitan City; hence, writ petition should be revoked. Joint affidavit submitted on behalf of the Office of Ward No. 3 of Lalitpur Municipality and on behalf of the Office of Lalitpur Sub-Metropolitan City reads as above.

Mandamus has been issued from the Supreme Court, stating not to refuse the registration of the birth in connection to the children with father's whereabouts not known, and as per it, by making amendment in Section (A) of Clause 4 of Birth, Death and Other Personal Events (Registration) Act, 2063, Act to Amend Some Nepal Acts to Maintain Gender Equality, 2063, provision is found to have been made by the Ministry of Federal Affairs and Local Development that the head of the family has to inform, a person of the family having age can get the birth and death registered by being informant in this/her absence, and mother of the children whose father's whereabouts not known can register the birth by becoming the mother the informant by writing description that whereabouts of the father are not known in the Chapter of the father's details of the Birth Registration Information Form. Hence, the issue claimed by the opponent petitioner as per that has been the issue already addressed by the esteemed Court; hence, the order is not supposed to be issued on the same issue again. Affidavit of the Ministry of Women, Children and Social Welfare reads as above.

This Ministry is not supposed to be made an opponent on the issue that local body has not registered the birth of the daughter of the writ petitioner. Affidavit of Home Ministry reads as above.

In order to register the birth of the children with father's whereabouts not known, circulars have been sent to all the local bodies on date 2062/10/13 (January 26, 2006 A.D.) so that they can register the incident of birth by becoming mother the informant, mentioning the description that address is not available in the Chapter of father's details of the birth information form, and births are being registered as per that. Similarly, circular was already issued on date 2067/6/14 (September 30, 2010 A.D.) by this Ministry on the issue of registering the birth of the child born in a foreign country, whose father

is not identified and who was born from a Nepalese mother. Likewise, as per Section (A) of Sub-clause (1) of Clause 4 of the Birth, Death and Other Personal Events (Registration) Act, 2033 in the condition that the person having the duty to inform about the birth and death is absent, the person prescribed by the Government of Nepal by publishing the notice in Nepal Gazette shall have to give such information. Such provision is there in Sub-clause (4) of Clause 4 of the aforementioned Act and as per it notice was published on date 2059/11/26 (March 10, 2003 A.D.) in Part 3, Number 47, Section-52 of Nepal Gazette with the description that Secretary in V.D.C's. and Executive Officers in Municipalities shall be the informants and incidents are being registered as per that. Thus, in the situation that provision has been made that birth can be registered on the basis of the citizenship of mother of the person whose father is yet to be identified, the writ petition furnished is revocable. Affidavits of Ministry of the Federal Affairs and Local Development and the Office of the Prime Minister and the Council of Ministers, with the same concord, read as above.

Pleadings presented on behalf of the writ petitioner:

Learned advocates duos, Mrs. Mira Dhungana and Ms. Sushma Gautam, present on behalf of the writ petitioner, pleaded the plea with description that there is provision in Section (A) of Sub-clause (1) of Clause 4 of Birth, Death and Other Personal events (Registration) Act, 2033, that the head of the family, and person of the family having reached the age shall have to inform about the birth and death in his absence; while going to register the birth as per the aforementioned provision, there is no situation that the birth of the writ petitioner has not been registered; although the description relating to the parents' citizenships has been mentioned in the information form of the birth contained in Schedule 2 of Birth, Death and Other Personal Events (Registration) Rule, 2034, it can never be inferred so as not to register the birth simply because there is no citizenship of any one; even the Interim Constitution of Nepal, 2063 and the Convention on Child Rights, 1989 have mentioned the inherent right that birth of children is supposed to be registered; hence, the opponents do not have the right to challenge it.

Order of the Court:

In the present issue that has been submitted before this Bench for the sake of decision upon being inducted in the daily cause lists as per Rule, writ petition is seen to have been furnished to get the birth registered since it has been refused to register in connection to the daughter having no identity. Upon looking into the affidavits of the opponents, the description is seen to have been mentioned in

the information form of Schedule 2 of Birth, Death and Other Incidents (Registration) Rule, 2034, that there is a format to be filled up with parents' descriptions who have obtained citizenships; hence, leaving the father's description empty as per it, birth is not supposed to be registered; in connection to the children having no whereabouts of father, alternative provision is existing that local Registrar can obtain the remedy by making demand of necessary exit from Chief Registrar.

Hence, in the context of present issue, decision is supposed to be made on the issue that whether or not the birth shall have to be registered in connection to the petitioner's daughter having no identity of father as per Birth, Death and Other Personal Events (Registration) Act, 2033. In this, considering towards the decision, the Birth, Death and Other Personal events (Registration) Act, 2033 is not found to have made any classifications pertaining to the births of what kinds of children are to be registered and not to be done in connection to what kinds. In the Preamble of the aforementioned Act, a Clause is found to have mentioned, "Due to being necessary to make legal provision pertaining to distributing the certificates by registering the incidents such as birth, death, marriage, divorce and migration of the persons residing in Nepal." The objectives and spirit of the Act is inclusive in the Preamble; hence, this provision of the aforementioned Act, to register the birth of any one residing in Nepal is not seen to have been obstructed. Despite being whatever, native or foreigner, the children born in Nepal, it is necessary to have record of it. So far, the issue of birth registration is found to have been established as a right in connection to not just for the native ones but for the refugees, stateless children or foreigners as well.¹

Various international conventions also have mentioned the issue that after births of any children take place, it is their natural right to be allowed registering the births. Article 6 of Universal Declaration of Human Rights has made provision that every person shall have the right to obtain identity as a person at any place in the view of law.² Article 24 (2) of International Convention on Civil and Political Rights, 1966 is found to have mentioned that every child shall be immediately registered and name is kept after they are born.³ Similarly, Article 7 (1) of the Convention on Child Rights, 1989 is seen to have guaranteed that children shall be instantly registered after they are born.⁴ Besides this, appeal is found to have been made by General Assembly of the United Nations Organization on December 19, 2011 A.D. to protect the rights including children's birth registration, by passing a proposal.⁵

Birth registration certificate is such a legal validity to be conferred by the state for any child that it makes him/her exist as a member of society or nation; it

establishes the relationship not only with his/her parents but also with the state as well.

If any child commits any crime against the prevailing law of the state, the birth registration is significant while filing charge or involving him/her in the process of justice.⁶ Similarly, while making contract, making him/her adopted son/daughter, giving jobs, preventing child marriage, inoculating against diseases or receiving other social security obtained from the state, the birth certificate has great importance. A study carried out by UNICEF pertaining to the birth registration of the children of various countries including Nepal is found to have indicated that the children who have no identity or whose births are not registered are likely to be made slaves or involved in prostitution.⁷

If each and every activity occurred within own Ward or Municipality is in statistical clearance by keeping records, it can help in even making plans. Moreover, if a child of Nepal is born for the sake of the child's best welfare, it cannot be interrupted simply because of not getting registered. In the present issue, the writ petitioner is a citizen of Nepal and there is no dispute that she has obtained the Nepalese citizenship. It is natural to register the birth of the children born in Nepal; hence, there is the situation of the data of the children born in Nepal being lost or being uncertain while refusing to register by showing the bases of rule, law or tradition even upon such the things to be done naturally. Upon lacking of such data, development and identity of such children can fall even in shadow.

Also, it is not that all the rest of the rights are automatically obtained by simply getting the child's birth registered. This is the matter to happen as per law. Whether it is the process of obtaining citizenship based on the birth, *jus soli*, or it is the process of obtaining citizenship based on blood relation, *jus sanguinis*, birth registration is essential for the sake of the welfare of the children in whatever of the processes. Section (B) of Article 8 (2) of the Interim Constitution of Nepal, 2063 has made the provision stating that if his/her father or mother was a Nepalese citizen at the time of the birth of a person, such person shall be considered as a Nepalese citizen, and so has Clause 3 (1) of Citizenship Act, 2063 as per that; hence, it is not right for the state to undermine the rationale of the birth registration certificate that remains as the first base of the acquisition of citizenship.

Pertaining to the present issue, apart from the things to be filled up in the Schedule 2 of Birth, Death and Other Personal Events (Registration) Rule, 2034, the parents' descriptions are also included, and it is seen that the incident has not been registered due to the complexity related with this.

It is the duty of the state to get the child's birth registered even by accepting to that extent whatever the description is filled up or can be filled up by the one who wishes to get the birth registered. Otherwise, complications arise later. On this issue, order has been issued by the Special Bench of this Court, stating, "Do not refuse to all the children including the children of Badi community, with fathers unidentified, to register their births due to the reason that fathers are not identified."⁸ Thus, order to get the births registered has been issued by this Court in connection to the children with no identity of fathers, whereas, in order to register the births of the children with fathers unidentified on the basis of the aforementioned order, all the Local Registrars were already given directives on date 2062/10/13 (January 26, 2006 A.D.) so that birth can be registered on the basis of mother's citizenship by writing the description of not identifying in the Chapter of father's descriptions of the information form. Thus, in the condition that order has been issued by this Court to register the birth even in the situation that the children's father is not identified, and directives have been given by the Ministry as per the aforementioned issue; it would not be better to refuse to register the birth taking this issue for granted. Not just to register upon being brought to get the birth registered, but if the work of birth registration can be compulsory, responsible system of governance is felt by the people. Hence, Mandamus is issued on the names of including the opponent, Lalitpur Sub- metropolitan City, stating that if applicant provides whatever the description mentioned in the form of Schedule 2 of Birth, Death and Other Personal Events (Registration) Rule, 2034 or brought, stating of not being able to fill it up, get it registered as it is by accepting that. Moreover, directive order has been issued on names of including the opponent, Office of the Prime Minister and the Council of Ministers, stating to reform or amend the aforementioned provision of Schedule 2, by making revision so that it can be accommodated in the circumstance, like that of the petitioner's, that father cannot be identified. By giving the information of the present order to the opponents through the Office of the Attorney General, submit the document file upon doing as per law by striking off the record of case file.

Justice

I am with the afore stated opinion.

S/d

Justice

Bench Officer: Anil Kumar Sharma

Computer: Ramsharan Timilsina

Done on : 2071/10/26/02 (Monday, 09th February, 2015)

Foot Notes:

1. Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, (UNICEF, 2007), p. 97
2. Article 6: "Everyone has the right to recognition everywhere as a person before the law."
3. Article 24 (2): "Every child shall be registered immediately after birth and shall have a name."
4. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."
5. "The General Assembly... urges all state parties to... protect children in matters relating to registration, family relations and adoption or other forms of alternative care..." cited from <http://www.un.org/en/ga/66/resolutions.html>.
6. Provisions are found to have been made by Clause 11 of Children Act, 2048 that if a person who commits any action that is deemed as a crime as per law or if it is a child below ten years of age while committing that action, no punishment of any kinds is supposed to be given to him, and even on the condition of being below 16 years of age as well, punishment shall be less than that of an adult person.
7. UNICEF, *Innocent Digest*, "Birth Registration: Right from the Start", (Innocent Research Centre, Florence, Italy, 2005), p. 5
8. *Including Tek Tamrakar on behalf of People's Welfare Conservation Forum for the sake of Dalit Community Vs. including His Majesty's Government, Secretariat of the Council of Ministers, Subject: Including Mandamus, N.L.M. 2062, Asoj, D.No. 7550, p. 680.*

Supreme Court

Division Bench

Honorable Justice Gopal Parajuli

Honorable Justice Cholendra Shamsher J.B.R.

Decision

070-WO-0082

Subject: Mandamus

Yasu Maya Budhathoki Basnet having birth place at ward No. 3 of Ajapu VDC of Okhaldhunga currently a resident of ward No 13 of Lalitpur Sub-metropolis1
 Bijay Basnet alias Bijay Chhetri Basnet son of Yasu Maya Budhathoki Basnet and Jogendra Basnet , a resident of ward No 13 of Lalitpur Sub -metropolis1 Applicant

Vs.

Nepal Government, Office of Prime Minister and Council of Ministers, Singhadurbar Kathmandu1
 Nepal Government Ministry of Home, Singhadurbar, Kathmandu.....1
 Nepal Government, Ministry of Federal Affairs and Local Development Lalitpur1
 Nepal Government Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs Singhadurbar Kathmandu1 Opponent
 Nepal Government Ministry of Women, Children and Social Welfare, Singhadurbar Kathmandu1
 District Administration Office, Lalitpur Man Bhawan.....1
 Office of ward No 13 of Lalitpur Sub -metropolis1

Brief fact and decision of the present writ petition that has been filed as per Articles 32 and 107 (2) of the Interim Constitution of Nepal are as follows:

Of the petitioners, I, Yashu Maya Budhathoki Basnet, single mother of the petitioner Bijay Basnet, have been providing patronage. After the birth of the son, my husband, Jogendra Basnet, went out of the valley, but the condition is that he has not been found since; and as per clear provision that mother can give identity by providing citizenship as per Article 8 (2) (B) of the Interim Constitution of Nepal, 2063, Clause 3 (1) of Nepal Citizenship Act, 2063, Rule 3 (1) of Citizenship Rule, 1.2 of (2) of Chapter 2 of Citizenship Certificate Distribution Procedure Directives, order command including mandamus order, whichever is needed, should be issued on the name of Lalitpur Sub-metropolitan City, Ward

No. 13 of the opponents to provide my son with recommendation to obtain citizenship certificate by descent, by mother's name, and on the name of Lalitpur District Administration Office to provide citizenship certificate.

My mother, Yashu Maya Budhathoki Basnet, has been providing me, Bijay Basnet, of the petitioners with nurture, education and health treatment as well, and I have been grown up, raised and educated under the patronage of single mother since I was born. I have just heard the name of my father from the mouth of the mother. I have not seen the face of my father well yet. Mother has worked hard to give birth to, raised and educate me. Hence, I want to obtain and make my identity, too, through the mother's name.

Citizenship is a very important basic document of

any person. Citizenship certificate is compulsory to obtain facilities and rights and to obtain opportunity provided for the citizen by the state. On one hand, personal events of a person, who is deprived of citizenship, are not registered, on the other hand, he/she cannot have the ownership of the property, has to be deprived of education, employment, cannot do industry, trade, business, cannot walk freely and cannot do banking transactions. The person without citizenship, is not identified as of which country he/she belongs; hence, despite being a human naturally, he/she is rendered without existence by being deprived of the basic human rights, due to being without right legally. Many a person including me, the petitioner, is deprived of the citizenship in Nepal. All of these persons are deprived of the aforementioned rights and opportunity. Hence, all of these persons including me are not just without citizenship, but are living being stateless, and our minimum basic human rights are also not protected; hence, these issues are very serious, sensitive and personally concerned issues.

The basic structure of the laws relating to citizenship is the Part 2 of the Interim Constitution of Nepal, 2063. Under the aforementioned Part of the Constitution, there is the provision in Article 8 (2) (B) that “a person whose father or mother was a citizen of Nepal at the time of his/her birth shall be deemed a citizen of Nepal by descent.” Similarly, in Sub-clause (1) of Clause 3 of Nepal Citizenship Act, 2063, there is the provision suitable to the Constitution. We, writ petitioners, are the full citizens of Nepal. My, Bijay Basnet’s, mother, of the petitioners, is also a Nepalese citizen. there is clear provision made in the Constitution and law that if any one of the father or the mother is a Nepalese citizen, his/her children shall be the citizens of Nepal by descent; but, I, the petitioner, has been deprived of the citizenship simply because the father of mine, Bijay Basnet’s, of the petitioners, has been disappeared; hence, it has been a very injustice. Condition has emerged to disappear my identity due to oral order of the opponents.

In Rule 3 (1) of the Citizenship Rule, 2063, even after fulfilling the process as per Schedule 1, that by attaching with the Nepalese citizenship certificate of father or mother or the relative within three generation of his/her own and recommendation made by the local body concerned so as to expose the birthplace and relationship or the replica copy of the birth registration certificate, the Nepalese citizen over 16 years of age, who wants to obtain Nepalese citizenship certificate can furnish application before the Chief District Officer concerned, due simply to obtaining the citizenship, identifying by the mother, oral order of Lalitpur Sub-metropolitan City, Ward

No. 13, by holding patriarchal mind set, value and norm, stating that recommendation shall not be provided and Lalitpur District Administration Office stating that it shall not provide citizenship is against the provisions made in the Constitution and the law; hence, our, the petitioners mother and sons’ constitutional, legal rights and the rights conferred by international treaties and conventions to obtain citizenship and provide citizenship to own children have been attacked; hence, it has been a great injustice. Due to the aforementioned order, the condition has been emerged to disappear my, Bijay Basnet’s, of the petitioners, identity, and I, the petitioner, have been compelled to be deprived of all the rights to be obtained by the citizen from the state upon being compelled to live in the stateless condition throughout the life.

Besides our constitutional and legal provisions as well, the treaties and agreements ratified by Nepal, being a party, have realized the right to citizenship as a human right. Article 15 of the Universal Declaration on Human Rights (UDHR), 1948 maintains the provision that every person has the right to citizenship; nobody shall be deprived of his/her right to citizenship discretionarily. Article 24 of International Covenant on Civic and Political Right (ICCPR), 1966 maintains that every child shall be registered immediately after birth and shall have a name; every child has the right to acquire a nationality. Article 9 (2) of Convention on Elimination of all forms of Discrimination Against Women (CEDAW) has made the provision that state parties shall grant women equal right with respect to the nationality of their children, and provision has been made as per this; however, justice has been done by depriving of the right to obtain citizenship or to obtain identity. In Article 7 of Convention on the Rights of Children (CRC) maintains that the child should be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and be cared for by his/her parents. The aforementioned provisions of the treaties and conventions, both the women and men shall be guaranteed with the right to provide citizenship. Thus, international treaties and agreements and our Constitution and law has granted the mother right to provide citizenship to her children, however, the opponents, by not providing citizenship to the child wishing to obtain identity from my name, the petitioner mother, has done injustice by depriving of the identity and intending to make stateless. By a single mother patron, I, Yashu Maya Budhathoki Basnet, of the petitioners, have been providing patronage to the son, Bijay Basnet. After the birth of the son, my husband, Jogendra Basnet, went out of the valley; but the condition is that even after searching for him,

he has not been traced, and as per clear provisions made in Article 8 (2) (B) of the Interim Constitution of Nepal, 2063, Clause 3 (1) of the Nepali Citizenship Act, 2063, Rule 3 (1) of Citizenship Rule, 1.2 of (2) of Chapter 2 of Citizenship Certificate Distribution Procedure Directives that mother can grant identity by providing citizenship to her children, order or command including the mandamus order, whichever is needed, should be issued on the name Lalitpur Sub-metropolitan City, Ward No. 13, of the opponents, to provide recommendation to obtain citizenship certificate and on the name of Lalitpur District Administration Office to provide citizenship to my son by descent, by mother's name.

I, Bijay Basnet, of the petitioners, was raised and educated by my mother, Yashu Maya Budhathoki, by giving birth, nurturing, providing education, health treatment. I have heard only the name of my father, but not seen him. Hence, my mother has constitutional and legal rights to provide identity through her name, and I am ensured with the right to obtain identity from my mother; hence, order or command including the mandamus order, whichever is needed, should be issued to provide me with citizenship through my mother's name.

There are hundreds of thousands of people like me across Nepal who have been the victims upon being without citizenship; by issuing mandamus so as to interpret in connection to theirs as well, order should also be issued on the names all of the seventy five District Administration Offices through the Ministry of Home Affairs and all of the Offices of Village Development Committees and Offices of the Metropolitan Cities, Sub-metropolitan Cities and all of their Ward Offices to circulate for the sake of implementation of the aforementioned order. Writ petition reads as above.

What has happened on this? Why is the order as per the petitioner's claim not supposed to be issued? If order is not supposed to be issued, explaining its ground and reason, submit by doing as per rule after affidavit is furnished or time limit expires, by issuing summon on the name of the opponent, keeping the replica copies of this order and the petition, to submit affidavit through Office of the Attorney General within 15 (fifteen) days of the journey time.

In this, upon going through the content raised in the writ petition, the content of providing citizenship by mother's name is seen to have remained; hence, it is seen to be appropriate to decide on the present writ petition quickly; hence, first priority has been given as per Rule 63 (3) (F 5) of Supreme Court Rule, 2049.

First of all, the opponents are the permanent resident of Okhaldhunga district, but not the permanent residents of Lalitpur Sub-metropolitan City. They may be residing temporarily in Lalitpur

district, Lalitpur Sub-metropolitan City. In Rule 3 of Nepal Citizenship Rule, 2063, under the procedures of obtaining Nepalese citizenship certificate, in Rule 3 (B), there is clear provision that recommendation made by the local body concerned, explaining birthplace and relationship, shall have to be submitted; hence, there exists the condition that Lalitpur Municipality, Ward No. 13 shall not have the jurisdiction to recommend for the citizenship for the opponent; whereas, on the other hand, the condition is that the opponent have not furnished the application to the Office of Ward No. 13 to get recommendation for the sake of the citizenship, but had come to get information orally. Hence, the permanent address of the opponent is not the Lalitpur Sub-metropolitan City, Ward No. 13; hence, there was the condition that this Office could not recommend for the sake of citizenship. Hence, the writ petition of the opponent is revocable.

Of the opponents, Yashu Maya Budhathoki Basnet has mentioned in the petition that her residence by birth is Sagarmatha zone, Okhaldhunga district, Ajapu Village Development Committee, Ward No. 3, but she has not mentioned the address of her husband. In the complaint furnished to request to take initiative for the sake of the recommendation of the National Human Rights Commission, she has mentioned that her husband was a resident of Okhaldhunga. Hence, instead of going to their own region, as being the residents of Okhaldhunga, and furnishing recommendation to the district administration concerned for the sake of citizenship upon obtaining it from village development committee or municipality concerned, by not so doing, there never exists the condition that the Court shall support the opponent simply due to entering into the writ jurisdiction, without adopting the legal process to be adopted by them as per law but stating that the Lalitpur Municipality, Ward No. 13 has not provided recommendation. Hence, writ petition is revocable in *prima facie*; it should be revoked.

It is clear that the opponents are the residents of Okhaldhunga; the provision of the Interim Constitution of Nepal, 2063, regarding citizenship, Nepal Citizenship Act, 2063 and Nepal Citizenship Rule, 2063 have made the provision that every Nepali shall have to obtain his/her citizenship from the region where they have their permanent residence. Nepal Citizenship Rule, 2063 has made the provision that, up to the connection to the staff, they can to obtain the citizenship certificate of the people of their family from the District Administration Office where they are working, if they want. Hence, the Office of Lalitpur Sub-metropolitan City, Ward No 13 does not have legal provision to recommend for the sake of citizenship certificate for the opponents of other district; hence,

the writ petition of the opponents is revocable; it should be revoked. Affidavit of Hom Nath Maske on behalf of Lalitpur Sub-metropolitan City, Ward No. 13 reads as above.

The writ petitioner has not submit the application to this office with rule as per Schedule to be submitted along with the recommendation from local body concerned for the sake of obtaining the citizenship certificate of which there is provision in Clause 8 of Nepal Citizenship Act, 2063 and Rule 3 of Nepal Citizenship Rule, 2063; hence, the aforementioned writ should be revoked. Affidavit of District Administration Office, Lalitpur reads as above.

The opponent writ petition has made this Ministry also an opponent, but cannot explain anywhere in the writ petition the particular reason of making opponent. Since she cannot justify what kind of effect has happened upon the right of the opponent due to which act and action of this Ministry, the claim pleading is automatically revocable. So far as the claim of the petitioner that citizenship certificate has to be obtained as per prevailing law is concerned, the act regarding the citizenship does not fall under the scope of this Ministry; hence, false claim pleading held by the opponent taking base of the acts not done by this Ministry should be revoked. Affidavit of Women, Children and Social Welfare Ministry reads as above.

As per mentioned by writ petitioner, Bijay Basnet, in his writ petition, the matter that Nepalese citizenship certificate was not provided to him when he demanded the citizenship certificate by fulfilling the procedure prescribed by law upon being under the Nepali Citizenship Act, 2063 including the Rule, 2063 is false. To obtain citizenship as per law is the natural right of all citizens; hence, circulation was made by this Ministry to all the offices under it on date 2068/5/5 (August 22, 2011 A.D) , stating that citizenship certificate should be provided through the mother's name as well, by fulfilling all the legal processes prescribed by act and rule. The petitioner's description that citizenship was not provided by mother's name is false. Hence, no acts and actions of this Ministry have affected the petitioner's fundamental right; hence, interim order and writ is not supposed to be issued in connection to this Ministry as per claimed in the writ petition; writ petition is revocable; it should be revoked. Affidavit of the Ministry of Home Affairs reads as above.

First of all, writ petitioners cannot mention anything regarding what and what kinds of constitutional and legal rights of theirs have been affected by what, what kinds of acts and actions or decisions of this Ministry. While holding claim against anyone, by clearly mentioning regarding what,

which right conferred by law is affected how due to what, which act and action or decision of whose, evidence should be submitted so as to satisfy the Court. Opponents' claim cannot be justified simply by making opponent or holding claim. In the aforementioned context, it is not found that no reason and ground could be explained to make this Ministry an opponent; hence, in connection to the Ministry, the opponents' writ petition is revocable in *prima facie*. It should be revoked.

In the context that it has been mentioned that, in the writ petition, Office of Lalitpur Sub-metropolitan City, Ward No. 13 has not provided recommendation for the sake of making Nepalese citizenship certificate, from the observation, description is clear that Local Self Rule Act, 2055 has been promulgated with the purpose to form the local bodies for the sake of development of the local self-rule system. It is clear that the Municipality set up as per Clause 80 of the aforementioned Act is a continuous successive self-ruled and organized institution as per Clause 81 of the same Act. Moreover, in Clause 262 of the same Act, there is legal provision that the rights conferred to the village development committee, municipality and district development committee, as per Local Self-Rule Act, except otherwise made provision in the aforementioned Act, these bodies shall have to use; in this context, regarding the decision and acts and actions happened and done by the municipality autonomous by law, there is no condition to make this Ministry an opponent; hence, the opponent's petition is revocable; it should be revoked.

So far, by demanding mandamus by the petitioners, condition does not exist for the writ petitioners to hold claim to issue mandamus on the name of including this Ministry, and as per the Government of Nepal (Work Division) Rule, 2069, the works including making recommendation for the sake of citizenship certificate and providing citizenship do not fall within the scope of this Ministry; hence, condition of creating any legal duty and liability of this Ministry does not exist regarding this; hence, the opponents' writ petition is revocable; it should be revoked. Affidavit of the Ministry of Federal Affairs and Local Development read as above.

The Government of Nepal, Office of the Prime Minister and the Council of Ministers is committed, by complying or getting the Constitution and law complied, to realize the concept of rule of law and to respect, protect and promote the rights of the citizens conferred by Constitution and law. So far as the issue of the acquisition of the citizenship claimed by the writ petitioner, regarding this, it is found that apart from the Constitution of Nepal, 2063, Nepal Citizenship Act, 2063 has made the provision that the citizens of Nepal can obtain the citizenship of Nepal without discrimination on the

ground of equality. It cannot be said otherwise that upon abiding by the rule, process and procedure determined in the Citizenship Act and Rule, the party, who requests to obtain citizenship shall, have to furnish application by rule to the body concerned. Likewise, it cannot be right to say otherwise that by fulfilling the process of law, the body concerned, too, shall have to provide recommendation. The opponent petitioner cannot clearly mention the matter that application congruent to rule was furnished to the body concerned for the sake of recommendation by fulfilling the rule, process and procedures determined in the law. In this condition, it cannot be said that the officials, who have legal duty to make recommendation of the citizenship and who provide citizenship certificate by remaining under the law, should provide the opponent petitioners by ignoring the rule, process and procedure determined in the law. Upon looking into the context of issue regarding conferring the citizenship of Nepal by mother's name, in writ petition of writ No. 0703 of the year 2067, having including Sabina Damai as petitioner versus including this Office as opponent, directive order was issued by esteemed Supreme Court on date 2067/11/15 (February 27, 2011 A.D.) and hence, 3 point circulation was sent to all District Administration Offices by this Office for the sake of its implementation; in the context of this issue, it does not appear that condition exists to issue order from the esteemed Court. In connection to the other petition claim, it shall be clear from the affidavits of body/lien on posts concerned. Hence, from the aforementioned ground and reason, condition does not exist to issue any order on the name of this Office as per claim of the opponent petitioner; hence, the opponent's writ petition should be revoked. Affidavit of the Office of the Prime Minister and the Council of Ministers reads as above.

By remaining under Section (B) of Sub-article 2 of Article 8 of the Interim Constitution of Nepal, 2063, Clause 3 of Nepal Citizenship Act, 2063, Nepal Citizenship Rule, 2063 and the directives formed under these, the Government of Nepal is providing Nepalese citizenship certificate by descent, and no Nepalese citizen has been deprived of obtaining citizenship by mother's name as per aforementioned law; the writ petition filed regarding conferring the citizenship is seen to be meaningless; hence, it should be revoked. Affidavit of Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs reads as above.

In the present writ petition that has been submitted before this Bench upon being inducted in cause list for the sake of decision, pleadings have been heard which was made by advocates Meera Dhungana and Ms. Sushma Gautam, present on behalf of petitioner,

presented the pleading stating that there is no dispute in the fact that the petitioner is a Nepalese citizen by descent as per prevailing Constitution and Act and Rule relating to citizenship. Jogendra Basnet, the husband of the petitioner, Yashu Maya and father of the petitioner, Bijay Basnet, has been presently disappeared and has not been traced even upon searching for and investigating, the petitioner, Bijay Basnet, has been provided with patronage by his mother by nurturing; in such a situation, when Bijay Basnet demanded recommendation of the local body from Lalitpur Municipality, Ward No. 13, wishing to obtain Nepalese citizenship certificate with the name and address of his mother, Yashu Maya Budhathoki Basnet; in this condition, the aforementioned Ward Office refused to be provided with recommendation; this act is against including the rule and procedure directives relating to citizenship. Citizenship has become a matter of a person's identity and right; hence, because local body has refused to fulfill the duty to be performed by it pursuant to law, condition has been created in which Nepalese descent is to be deprived of obtaining Nepalese citizenship certificate. In the condition that the Constitution has ensured a person, who is qualified to obtain Nepalese citizenship by descent, to obtain the citizenship of Nepal so as to have identity through the name of any one of the father or the mother, the act meted out to refuse to carry on its duty by a body of the state mechanism so as to pose obstruction in the aforementioned constitutional right of the citizen is extremely unjust; hence, there is the condition that the petitioner Bijay Chhetri is rendered to have been deprived of the constitutional right to obtain his citizenship. Though the mother of the petitioner, Yashu Maya, was born under the Okhaldhunga district, they are presently residing in Lalitpur district, Lalitpur Municipality, Ward No. 13; in this situation, the act of furthering the process of obtaining citizenship from the same district by her child is congruent to law; hence, mandamus order should be issued on the name of the opponent to provide or get the citizenship provided by mother's name as per petition claim. Similarly, learned joint attorney, Mr. Kiran Paudel, present on behalf of the opponents including the Office of the Prime Minister and the Council of Ministers, pleaded stating that though existing Constitution, Act and Rule has put no restriction to the petitioner, Bijay Basnet, on the issue of obtaining citizenship of Nepal by mother's name; the procedure prescribed must be fulfilled for this. But, in the present dispute, condition appears that the petitioners are not seen to have furnished the process for the sake of obtaining citizenship by fulfilling process as per this. It is mentioned that the permanent address of the parents of the

petitioner, Bijay Basnet, is Okhaldhuga district, Ajapu Village Development Committee, Ward No. 3. If the petitioners furnished application from the district having their permanent address for the sake of obtaining citizenship, condition still existed for him to obtain citizenship; hence, it is not right to say otherwise to the act of the such irrelevant region which has refused to be provided with citizenship certificate when the application is furnished requesting to get citizenship certificate from the irrelevant region. Writ petition should be revoked. Whereas, learned advocate, Mr. Lok Chandra Paudel, pleaded on behalf of the opponent, Lalitpur Sub-metropolitan City, stating that the permanent address of the petitioners is not seen to have been or remained in Lalitpur Sub-metropolitan City, Ward No. 13, and Nepal Citizenship Act and Rule have made the provision that every Nepalese shall have to obtain his/her citizenship from the region having his/her permanent residence; hence, Ward Office cannot recommend in connection to the person who does not have permanent residence in its area; hence, only an oral information has been given to the petitioner that recommendation shall not be given as per his petition claim; hence, it is not right to issue order on the name of the body having no jurisdiction as per petition claim.

Upon hearing the pleadings made by the aforementioned learned legal professionals of for and against, while seeing by studying the document file along with writ petition, in this, it appears that decision is supposed to be made regarding whether the order as per the petition claim is supposed to be issued or not.

Upon considering towards the decision, in the present writ petition that has come to be filed with the description that upon having love marriage of Yashu Maya Budhathoki Basnet, of the petitioners, with Jogendra Banset, a son, Bijay Basnet, was born, at home located at Lalitpur Sub-metropolitan City, Ward No. 13, from their conjugal relationship, on date 2049/10/1 (January 14, 1993 A.D.); the husband went out of the valley after the birth of the son and has not returned yet; for the studies of higher secondary level of the son, Bijay, citizenship certificate was needed presently; hence, after filling up the Schedule form No. 1, when they went to the Office of Ward No. 13 of Lalitpur Sub-metropolitan City on date 2069/9/10 (December 25, 2012 A.D.) as recommendation of local body was necessary to make citizenship certificate, they were refused orally, saying that recommendation could not provided; hence, when they went to District Administration Office on date 2069/9/10 (December 25, 2012 A.D.), along with the Schedule form, birth registration, school mark sheet, certificate, they were returned without registering the application, giving oral

order that without father, citizenship could not be given to the son and that descent meant father. The son, Bijay, wished to get Nepalese citizenship by mother's name, and condition exists by the Interim Constitution of Nepal and Citizenship Act and Rule that citizenship could be obtained by mother's name, but the act meted out by the opponents so as to prevent Bijay Basnet from acquiring the citizenship opposite to the aforementioned act and law was illegal are seen to have been against the other treaties and agreements including Universal Declaration on Human Rights that Nepal had accepted; hence, it was requested from the present writ jurisdiction to get the rights of the petitioner conferred by the Constitution prevailed. Hence, order should be issued on the name of the opponent Ward Office to provide the petitioner, Bijay Basnet, with recommendation for the sake of obtaining citizenship by mother's name and on the name of District Administration Office, Lalitpur, to provide citizenship as per that, affidavits of the opponents, including Lalitpur Municipality, are seen to have been submitted with the description that there was no confusion in distributing citizenship of Nepal to the petitioner by descent as per the provisions of Interim Constitution of Nepal, 2063, Nepal Citizenship Act, 2063 and Nepal Citizenship Rule, 2063, but process prescribed to obtain citizenship would have to be adopted as per the aforementioned law and directives; though there was the condition that citizenship could be obtained from the district where the petitioner had permanent residence, the permanent address of the petitioner's parents was seen to have been Okhaldhunga, but not under the Lalitpur district; in this condition, his recommendation could not be done from Lalitpur Municipality, Ward No. 13.

In this, from the replica copies, it is seen that application was submitted to local Lalitpur Sub-metropolitan City No. 13 Ward Office for the sake of obtaining Nepalese citizenship certificate by filling up Schedule form-1 along with the replica copies of birth registration certificate, character certificate of the petitioner, Bijay Basnet and the replica copy of the citizenship certificate of the mother, Yashu Maya Budhathoki Basnet. Regarding the acquiring the Nepalese citizenship, in Article 8 (2) of the Interim Constitution of Nepal, 2063, mentioning as "the following person who has his/her permanent domicile in Nepal at the time of commencement of this Constitution shall be the citizen of Nepal by descent" in Article 8 (2) (B) of the same stating as "a person whose father or mother was a citizen of Nepal at his/her birth", there is constitutional guarantee of the acquisition of Nepalese citizenship by descent. Likewise, as stated by Clause 3 (1) of Nepal Citizenship Act, 2063 " if a person's father

or mother was a citizen of Nepal at the time of his/her birth, such person shall be the citizen of Nepal by descent”, there appears legal provision regarding the citizenship acquisition. Petitioner Bijay Basnet is seen to have been born on date 2049/10/1 (January 14, 1993 A.D.) at Lalitpur Sub-metropolitan City, Ward No. 13 from the matrimonial relationship between Jogendra Basnet and Yashu Maya Budhathoki Basnet, and his father, Jogendra Basnet, was disappeared and has not been traced yet and mother, Yashu Maya, Budhathoki, is seen to have obtained Nepalese citizenship certificate by descent, of C. C. No. 752/944/1/4 from District Office. From this, of the necessary conditions made provision by the Constitution and Nepal law relating to citizenship, for the sake of obtaining citizenship by descent, in the condition that father or mother shall have to be a Nepalese citizen by descent, the children of such father and mother shall be qualified to obtain Nepalese citizenship by descent; as per this provision, on the ground of the father of the petitioner, Bijay Basnet, not traced and his mother, Yashu Maya Budhathoki, being a Nepalese citizen by descent; in this condition, the fact that the petitioner, Bijay Basnet, is a person qualified to obtain Nepalese citizenship by descent seems to be justified indisputably.

Now, upon considering regarding whether the petitioner, Bijay Basnet, can or cannot obtain citizenship by mother’s name by descent, it is undisputed that citizenship is a matter of fundamental human rights and extensive interest and concern of every person. Citizenship is a means of determining legal and political ties between a person and the state, and this is a legal and official identity of a person as well. To confer citizenship is the duty of a state and to obtain citizenship is a matter of right of a person, as well. Article 15 of the Universal Declaration on Human Rights has made the provision that by guaranteeing every person of the right to citizenship, nobody shall be deprived of the citizenship discretionarily. This provision has granted the surety right to any person against the statelessness, and has made it clear that the state shall have to make provision of equal right to its citizens regarding citizenship, and discrimination is not supposed to be made on the matter of conferring citizenship with the grounds of ethnicity, gender, language, religion, political or other faiths. Similarly, Article 24 of the International Covenant on Civic and Political Rights has ensured every person the right to get birth registered and the right to acquire nationality without discrimination. Article 7 of Convention on Child Rights, which was passed realizing the surety of the right of any children to live along with their own nationality without discrimination, has guaranteed the right

for the children to register birth immediately they are born, to have name and right to nationality, and has ensured including the right to know their parents and get care from them so far as possible. Likewise, Article 8 has guaranteed that children shall have the right to protect their nationality, name and familial relationship including their identity as per recognized by the party state. This provision has realized the norm that no child should be stateless. Thus, Nepal also has become a party state of the treaties and conventions including the aforementioned declarations, and Clause 9 (1) of Nepal Treaty Act, 2047 has accepted the norm that the provisions of the treaties of which Nepal is a party shall remain at the status above the Nepal law; in this condition, it appears that the provisions made by such treaties and conventions regarding citizenship shall be implemented effectively in the context of the present dispute.

The provision of the Constitution and Act and Rule is itself clear that the person who is a citizen of Nepal by descent, if he/she wishes to obtain citizenship through anyone’s name out of father or mother, can obtain citizenship from the same name and address, and prior to this, in the writ petition having including Ranjit Thapa versus the Office of the Prime Minister and the Council of Ministers, interpretation has been made by this Court on date 2066/3/12 (June 26, 2009 A.D.), stating “Rule 3 of Nepal Citizenship Rule, 2063 has granted the right to obtain citizenship certificate through any one of the father or the mother thinking of both of them of the parents as descent; despite having different addresses of the parents, if the petitioner comes to demand at the place of the address of the father or the mother, of which he makes a choice, along with the recommendation of the body concerned by fulfilling the procedure prescribed, he can obtain citizenship certificate from one place out of the addresses of the father or the mother chosen by him,” (N.L.M. 2066, Number 6, D.No. 8175), Hence, it seems that the petitioner, Bijay Basnet, can obtain citizenship of Nepal by descent through the name of the mother, Yashu Maya Basnet.

Now, upon looking to the pleadings of the affidavits of the District Administration Office and Lalitpur Sub-metropolitan City, which state that citizenship certificate could not be given to the petitioner because permanent address of the petitioner was not seen to have been within Lalitpur Sub-metropolitan City, Ward No. 13, the fact that he was born at Lalitpur 13 on date 2049/10/1 (January 14, 1993 A.D.) is seen to have been mentioned in the replica copy of the petitioner’s, Bijay Basnet’s, birth registration certificate, whereas, petition pleading is seen to have maintained that the mother, petitioner Yashu Maya Budhathoki, obtained the citizenship of

Nepal from Lalitpur on date 2044/1/4 (April 17, 1987 A.D.), and that her residence has been at Lalitpur Sub-metropolitan City, Ward No. 13; hence, it is seen that the petitioner, Bijay Basnet shall have to obtain citizenship certificate of Nepal by descent from the address of Lalitpur Municipality, Ward No. 13 as per Clause 3 (1) of Citizenship Act, 2063 and Rule 3 (1) of Citizenship Rule, 2063.

Hence, from the legal ground and the ground of including the precedent propounded by this Court analyzed above in the chapter, it is seen that the petitioner Bijay Basnet can obtain citizenship of Nepal by descent through the name of his mother, Yashu Maya Budhathoki, from the address Lalitpur district, Lalitpur Sub-metropolitan City, Ward No. 13; it is decided that this mandamus order shall be

issued on the name of the opponents, to provide or get the citizenship certificate of Nepal by descent provided to the petitioner by fulfilling the rule and process of law. By providing information of the present order to the respondents, submit the document to the record section by striking off the record of the case file.

Justice

I agree with the said opinion.

Justice

Bench Officer: Keshab Prasad Poudel

Computer Setting: Bishnu Devi Shrestha

2071/12/30/02 (Monday, 13th April, 2015)



Supreme Court,
Special Bench

Honorable Justice Kalyan Shrestha

Honorable Justice Om Prakash Mishra

Honorable Justice Devendra Gopal Shrestha

Order

070-WS-0016

Subject: Certiorari included Mandamus

Amrit Kumar Sharma, age 17, resident of ward No. 35 of Kathmandu Metropolis of
Kathmandu District I1 Petitioner

Vs.

Government of Nepal, the Office of the Prime Minister and Council of Ministers1
Home Ministry, Government of Nepal1
Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs Government
of Nepal1 Respondent
Ministry of Local Development and Federal Affairs, Government of Nepal1
District Administration Office, Kathmandu1

The brief facts and decision of the present writ petition filed under Articles 32 and 107 of the Interim Constitution of Nepal, 2063 are as follows.

A person, with name/surname not known, house is said to be Lamjung district, took me to the house of Prajapati Sharma (Timsina), a resident of Dhanusha District, Naktajhija V.D.C., Ward No. 1, saying that I was his son and that he himself was living there to work. Later, that person went away leaving me there, saying that he would return after a while, but has not come back yet; then he could not have been found even upon being searched for by Area Police Office, Mahendranagar, Dhanusha. I have been living under the patronage of Prajapati Sharma (Timsina) since that person left me there. As per the patron, as the name was told as Amrit Kumar, my name has been identified as Amrit Kumar. Because my patron has migrated to Kathmandu, now I am also residing in Kathmandu along with him. I have become adult now, while application was furnished to the District Administration Office, Kathmandu for the sake of citizenship by fulfilling necessary process, that Office has not conferred the citizenship, stating that parents'

names and birthplaces have not been mentioned in the application form, and the patron, Prajapati Sharma (Timsina) has not been conferred patronage by any authorized body for the sake of including nurturing; hence, I have become citizenship-less. In Article 8 of the interim Constitution of Nepal, 2063, there is the provision that if the father or mother of a person was a Nepalese citizen during the time of his/her birth, such person, and every minor having no whereabouts of maternity/paternity, who has been found within the border of Nepal, shall be considered as a citizen of Nepal based on descent until his/her father or mother is traced. Sub-clause (6) of Clause 3 of Nepal citizenship Act, 2063 also has made provision that every minor, having no whereabouts of maternity/paternity, who has been found within the border of Nepal, shall be considered as a citizen of Nepal based on descent until his/her father or mother is found. As per the aforementioned constitutional and legal provisions there is no reason for me not to obtain citizenship. The minors, whose maternity/paternity has not been traced, but found within Nepal borders like me, the petitioner, have been deprived of

obtaining the citizenship despite being brought up under anybody's patronage. To be a situation of statelessness by not obtaining citizenship thus is to be deprived of the fundamental rights as well. Even in the situation of conferring the citizenships to the persons having parents not identified, it is mentioned in the citizenship certificates, against the dignity, that the whereabouts of maternity/paternity have not been traced. Consequently, there shall be a serious affect in the use of human rights; hence, I have included the dispute with the concern of public litigation, too, in the present petition.

Rule 3 (3) of Nepal Citizenship Rule, 2063 has made the provision that if a Nepalese citizen having maternity/paternity not traced, having reached the age of 16 years, wishes to obtain citizenship, if brought up and grown up under the patronage of approved Bal Mandir or orphanage, with the recommendation of such organization and if any particular person has nurtured by receiving patronage as per law, attaching with the citizenship of the person who has nurtured, application shall have to be furnished before the Chief District Officer concerned. Besides this, if nurtured by organization, the identification made by the Chief of such organization and if nurtured by a particular person, identification made by the person who has nurtured shall have to be attached with the application; procedural process has been mentioned in Sub-rule (4), stating that if there are additional things to be examined about the maternity/paternity, recommendation of local body or police report can be asked for as necessary, and in Sub-rule (6) and Point No. 10 (7) of Citizenship Certificate Distribution Procedure Directives, stating that name, surname, address of the patron shall have to be mentioned in the place of citizenship certificate of the person having the whereabouts of maternity/paternity not traced where the names of father or mother are to be mentioned, indicating the description as the maternity/paternity not traced.

These provisions of aforementioned procedural law have not mentioned the matters that in what condition the District Administration Office is supposed to refuse to confer citizenship. As per directed by Point Nos. 3, 4 and 5 of the Directives, not all persons, having the whereabouts of maternity/paternity not traced, stay in Bal Mandir, orphanage or other similar organizations. Even in the situation of being provided with patronage by a particular person, if such person does not provide the photocopy by making recommendation for citizenship, this person shall be deprived of obtaining the citizenship. Furthermore, there is no possibility that street children shall obtain citizenships.

Due to different legal provisions made in different laws, street children, children brought up and grown up in Bal Mandir or in organization that patronizes orphan children or in orphanage, children nurtured by any person being a special patron are deprived of obtaining citizenships upon being adults. In Clause 10 of Children Act, 2048, although names of father and grandfather can be mentioned in any formal functions and actions or in documents as per law, in the aforementioned Clause, a provision has been made that in connection to both the father and mother have not been found, if the person or organization that raises him/her writes that father and mother are not found, it will be okay even if such child does not write names of mother, father or grandfather. In Clause 34, provision has been made that the Government of Nepal shall establish Child Welfare Centers in different regions of Nepal as needed and until Child Welfare Centers are not established thus, the Government of Nepal can utilize the Child Welfare Center, orphanages or Mental Retardation Centers run by any other persons or organizations for the sake of keeping children. Although provision has been made by this Clause that children can be kept in Child Welfare Centers, orphanages or Mental Retardation Centers run by any persons or organizations as well, by patronizing, there is no situation that Nepalese citizenship certificates can be provided upon the recommendation of such bodies. In Clause 35, if Child Welfare Official or police staff himself finds any stray child or brought to be submitted by any other person, such child should be submitted to the nearby Child Welfare Center by keeping descriptions and finger's impression including name, surname, address of the three generations, photo and any peculiar sign remained in the body in connection to such child. Clause 36 has made the provision that stray child shall be kept in Child Welfare Center until sixteen years of age is not complete, and if problem of his/her livelihood is likely to come up while releasing such child, he/she can be kept in Child Welfare Center for maximum up to 18 years. Though the aforementioned Clause has made the provision that generally only the person up to the age of 16 can be kept in the child welfare center, there is the provision that release has to be made along with citizenship certificate while releasing from its patronage. The provision retained in Clause 22 is very limited, which has not addressed the condition of the minor, whose paternity/maternity is not known. In connection to the person, whose paternity/maternity is not known, there is not existence of the situation that patron can be appointed. For the sake of obtaining citizenship in connection to such children, there is no condition at all to submit the photocopy of the patron and to

get identification made by the patron. The provision of patronage, if father or mother or any relative of the same family having reached the age is not alive or despite being alive, there is no condition that the legal provision, made relating to the patronage in connection to the children of not being able to be nurtured and looked after due to physical or mental inability, can fulfill the necessity for the sake of conferring citizenship to the minor, whose paternity/maternity is not known. Furthermore, it is very rare in Nepal to verify that any particular person has nurtured the minor, whose paternity/maternity is not known by obtaining patronage as per prevailing law.

Hence, Sub-rule (6) of Nepal Citizenship Rule, 2063 and Point No. (7) of Citizenship Certificate Distribution Directives, 2063 have been inconsistent with including Sub-article (2) (3) of Article 8, Article 10, Sub-article 12, Sub-articles (1) of Article 12, Sub-articles (1), (2), (3) of Article 13, Sub-article (1) Article 22 of the Interim Constitution of Nepal, 2063 and Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063, hence, should be declared invalid and void to the extent of that inconsistency as per Sub-article (1) of Article 107 of the Constitution, and in the situation of the identification made by Prajapati Sharma (Timsina) by attaching his citizenship as per law, Mandamus order should be issued on the names of the opponents, the Home Ministry and the District Administration Office, Kathmandu as per Sub-clause (2) of Article 107 of the Constitution, stating to get the citizenship provided as per law. Furthermore, under the public litigation dispute, in connection to the children having paternity/maternity not known within the borders of Nepal and of the condition of having no patron at all, street children, children of the condition of having no patronage of Bal Mandir, orphanage or organization or patron that provides patronage for children, Mandamus and the order whichever is needed should be issued on the names of the opponents, stating to get the citizenships provided easily by making procedures even in the situation that the patrons have not made identification. Writ petition reads as above.

In this, send for affidavits within 15 days. As present issue has included the issue of including paternity and maternity, being connected with Nepalese citizenship; this writ petition is seen to be decided instantly; hence, preference has been given. Order of this Court, of the date of 2070/5/26 (September 11, 2013 A.D.), reads as above.

As per the decision of the level of honorable Deputy Prime Minister of the date of 2069/10/5 (January 18, 2013 A.D.), circular was already made on date 2069/10/7 (January 20, 2013 A.D.) to all Regional Administration Offices and District Administration

Offices to issue the citizenship so as not to be against the Interim Constitution, 2063, Nepal Citizenship Act, 2063 and Rule of the same, 2063 as well. In point No. 4 of the aforementioned circular, descriptions have been mentioned including “to issue citizenship as per Rule with the patron’s identification to the children found within border of Nepal but having paternity/maternity not known by letting it happen as per that during the time when paternity, maternity is traced later on; and to leave empty (-), keeping the record of the issue of parents’ not traced in the record only, by mentioning nothing in the chapter of parents in the citizenship; hence, present writ petition should be revoked. Affidavit submitted on behalf of the opponent, Home Ministry, reads as above.

In Sub-article (3) of Article 8 of the Interim Constitution of Nepal, 2063, provision has been made to write the patron’s name for every minor found within the borders of Nepal, whose paternity/maternity is not known in the situation of his/her father or mother has not been found, in the place of writing parents’ names in the citizenship certificate, mentioning the same description; hence, present writ petition should be revoked. With this description, affidavit submitted on behalf of the opponent, Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs reads as above.

In Sub-article (3) of Article 8 of the Interim Constitution of Nepal, 2063 and Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063, there are clear provisions that every minor found within the borders of Nepal, whose paternity/maternity is not known, shall be considered as Nepalese citizen on the basis of descent until his/her father or mother is traced.

The issue of Rule and Procedure challenged by the petitioner has been made so that it can be easy to implement the provision contained in the Constitution and in the Act. No issue about creating or breaching the rights of any person is raised by this. Sub-rule (6) of Rule (3) of Citizenship Rule, 2063 has not hooked against conferring citizenship of descent to the person, whose paternity/maternity is not known, indicating the description, stating that his/her paternity/maternity has not been known and found, cannot be said to be against humanitarian honor and dignity. Affidavit submitted on behalf of Office of the Prime Minister and the Council of Ministers reads as above.

The function of making procedures relating to citizenship distribution does not fall within the jurisdiction of this Ministry; hence, present writ petition should be revoked. Affidavit submitted on behalf of the opponent, Women, Children and Social Welfare Ministry reads as above.

Affidavit is not seen to have been furnished on behalf of the opponent, District Administration Office.

In the present writ petition that has been submitted by being inducted in the daily cause lists as per Rule, the learned advocates Mr. Sabin Shrestha and Ms. Sushma Gautam, present on behalf of the petitioner, have raised two issues upon the present dispute. First, paternity and maternity of this petitioner, Amrit Kumar Sharma, have not been identified. He was taken by a person to the house of Prajapati Sharma saying that he was his son; but later the person who had taken him, disappeared; hence, has lived under the patronage of Prajapati Sharma. Because he was found within Nepal but paternity and maternity have not been found; hence, the petitioner has furnished the application to District Administration Office to obtain the citizenship on behalf of the patron as per Nepal Citizenship Act and Rule, 2063. Application was furnished by including all the necessary documents to obtain citizenship, but the aforementioned Office has refused to confer the citizenship on the basis that the patron does not have legal status and names and birth places of the parents of Amrit Kumar Sharma have not been mentioned in the Schedule form and birth registration certificate. However, there is the provision that the kinds of persons mentioned in Sub-clause 3 of Clause 3 of Nepal Citizenship Act, 2063 can obtain citizenships. Hence, the decision of District Administration Office should be revoked.

Second, in Sub-article (3) of Article 8 of the Interim Constitution of Nepal, 2063, there is the provision that every minor found in Nepal, having paternity and maternity not known, shall be considered as a citizen of Nepal on the basis of descent until the father or mother is not found. Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063 has made the legal provision of the same level. But, by making the provision that patron's name, surname and address shall have to be mentioned, indicating the description "paternity/maternity has not been traced" in the place of the citizenship of the person, whose paternity/maternity is not known, where the name of father or mother shall have to be mentioned, Sub-clause (3) of Clause 3 of same Rule, 2063 and the (7) of Point No. 10 of Citizenship certificate distribution procedure directives, 2063 have hooked upon the provisions existing in the Constitution and the Act, and the provisions made in Sub-rule (6) of Rule 3 and the (7) of Point No. 10 of the Directives are against the Sub-articles (2), (3), (13), (22) of Article 8 of the Constitution and Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063; hence, order should be made as per Article 107 (1) and (2) of the Constitution. Pleadings were presented as above.

Learned deputy-attorney, Mr. Chandra Kanta Khanal, present on behalf of the opponents, presented the pleadings with the description that just to lay claim of the revocation, stating that the provision of any Rule is inconsistent with the Constitution and mother Act is not sufficient. Rule and Directives are made so that it can be easy to implement the provisions mentioned in the Constitution and Act. Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063 has made the provision that every minor found in Nepal, having paternity and maternity not known, shall be considered as a citizen of Nepal on the basis of descent until the father or mother is traced. As per that, no citizens have to be deprived of obtaining citizenships. The provision that so-so procedures should be fulfilled in order to obtain the citizenships cannot hook the provision of the Constitution. That is just a procedural issue. In the present dispute Prajapati Sharma, the patron of this writ petitioner, Amrit Kumar Sharma, is not seen to have obtained that patronage from authorized body; hence, there is no legal error on the decision made by District Administration Office, stating that citizenship cannot be conferred; hence, the present writ petition should be revoked.

Upon hearing the aforementioned pleadings made by the legal professionals of both the parties, it is seen that following issues are seen to be decided on the present writ petition.

- (1) Are Sub-rule (6) of Rule (3) of Nepal Citizenship Rule, 2063 and Point No. 10 (7) of Citizenship Certificate Distribution Directives, 2063 inconsistent with Sub-article (3), 13, 22 of Article 8 of the Interim Constitution of Nepal, 2063 and Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063 or not?
- (2) Is the order as per claimed by the petitioner supposed to be issued or not?

While considering towards the first issue to be decided, claim is seen to have been laid by the petitioner, Amrit Kumar Sharma, stating that Sub-rule (3) of Rule 3 of Nepal Citizenship Act, 2063 and Point No. 10 (7) of Citizenship Certificate Distribution Directives, 2063 have been inconsistent with Sub-articles (2), (3) of Article 8, Article 10, Sub-article (1) of 12, Sub-articles (1), (2), (3) of Article 13 and Sub-clause (1) of Article 22 of the Constitution, hence should be revoked to the extent of that inconsistency, and that he is a person having paternity maternity not known, who has been living under the patronage of Prajapati Sharma, and that although such person shall have to obtain citizenship upon being considered as a Nepalese citizen until father or mother is traced, the decision of District Administration Office, Kathmandu not to confer citizenship on the basis including that

Prajapati Sharma is not seen to have been the patronage as per law is against the aforementioned legal provision as well; hence the aforementioned decision should be revoked.

Upon seeing the affidavit of the respondent, Home Ministry, description is seen to have been mentioned that as per the decision of the date of 2069/10/5 (January 18, 2013 A.D.) of the level of honorable Deputy Prime Minister and Home Ministry, circular was already made to all the regional and District Administration Offices on date 2069/10/7 (January 20, 2013 A.D.), stating to issue citizenship in an easy way so as not to be against the Interim Constitution, 2063 and Nepal Citizenship Act, 2063 and Rule, 2063; the children found within the borders of Nepal, but having paternity maternity not known, from the identification of the patron, and to leave the Chapter of parents empty without mentioning anything by just keeping the issue of the parents being untraced in the record of the Office, letting it happen as per upon finding out paternity maternity later; hence, the present writ petition should be revoked.

Actually, the Article 13 of the Constitution has expressed commitment that nobody shall be deprived of the equal protection of the law. The aforementioned Article is seen to have been connected with the concept that all the citizens are equal in the eye of law. In general sense, not to discriminate on any basis such as religion, color, gender, caste, ethnicity among persons to persons is equality. In the context of fundamental rights, the principle of equality is linked with the state actions. To carry on the equality in the use and treatment of the law by any person or group is the purpose of the equality; hence, to reach up to the same status from different statuses or to search for the equality in the consequence is also considered as another aspect of the equality. To show equal treatment in the eye of law is a procedural equality, whereas, to obtain equality in the consequence is a substantial equality. To show equal treatment among the equal and to show unequal treatment among the unequal is the essence of equality.

This principle of the equality considers all as equal before the law by deeming consequence as secondary and stressing on the procedure; it is also called formal equality in constitutional procedural science. In the use of general law and in other treatment, the state had also better not discriminate among its citizens on any or all bases such as caste, ethnicity, region, language, religion, color, gender or gender identity, social origin. This principle implies the norm that all are equal before the law; nobody shall have the provision of prerogative or immunity and all shall be equal in the use of general law. This checks the right of the government to apply discretion in the use of law. The principal base of this

principle is the equal treatment for the equal and different treatment for the unequal. The expectation of unequal treatment unequally is not considered possible and essential. From the perspective of constitutional procedural science, such provision of the equality is kept for the sake of making the state more accountable under the state's responsibility of people's welfare.

In Article 22 (1) of the Interim Constitution of Nepal, 2063, a constitutional provision is seen to have been made including that every child shall have the right of his/her identity and name. The issue of the children's identity is seen to have been developed as the content of human right by being transferred from the parents' rights. Likewise, the issue of their rights has been transferred in the responsibility of the state as well from the parents.

By raising the dispute of public litigation, there is not dispute that the petitioner has entered the Court by laying claim for the revocation of the Sub-rule (6) of Rule 3 of Nepal Citizenship Rule, 2063 and Point No. 10 (7) of Citizenship Certificate Distribution Directives, 2063. Upon looking into the provision of Sub-clause (3) of Clause 3 of the Interim Constitution of Nepal, 2063 by keeping at the same place, equal provision is seen to have been made, stating that every child found within the borders of Nepal, having paternity maternity not known, shall be considered a citizen of Nepal on the basis of descent until his/her father or mother is not found out or traced. From this constitutional or legal provision, every person found within the borders of Nepal, but having paternity and maternity not known, is seen to be able to obtain citizenship on the basis of descent.

In the present dispute, information is seen to have been provided on date 2070/4/14 (July 29, 2013 A.D.) with the description that paternity/maternity of the petitioner, Amrit Kumar Sharma, is not seen to have been traced till now. Because the paternity and maternity have not been identified, application is seen to have been furnished in the District Administration Office, through the patronage of his patron, Prajapati Sharma (Timsina) by attaching the documents including the photocopy of his citizenship. In the application form, the District Administration Office, Kathmandu has not mentioned the parents' names and address of the petitioner in the application form; and Prajapati Sharma (Timsina), so-called his patron, is not seen to have obtained the patronage from any authorized body to nurture and provide education and instruction as per prevailing law; it is not seen right to confer him the citizenship as per Nepal Citizenship Act, 2063 and same Rule, 2063.

While looking into the Sub-rule (6) of Rule 3 of

Nepal Citizenship Rule, 2063, description is seen to have been mentioned that in the place where name, surname and address of father or mother of the citizenship of the person, whose paternity/ maternity is not known, the patron's name, surname, address shall have to be mentioned, indicating the description that paternity maternity has not been traced, and under 10 of the aforementioned Procedural Directives, 2063 in the Chapter of the names of parents, mentioning "paternity/maternity has not been traced", patron's name, surname, address shall have to be disclosed.

The aforementioned provision is not seen to have deprived the legal right to be able to obtain the citizenship through the paternity maternity not known and patronage. Only in connection that name of father or mother shall have to be mentioned in the citizenship certificate, it has been just said that paternity maternity have not been traced. It is not sufficient to just say that the provision made in any Rule is inconsistent with mother Act and Constitution. If it is said to have been inconsistent, the duty to rule out with logic and evidence is upon the writ petition himself. In the situation of improper restriction upon the fundamental rights conferred by the Constitution, the provisions of the Rule arranged so as to restrict are supposed to be declared void by this Court by carrying out constitutional examination. The fact is known that the provisions of the Rule that are inconsistent with the mother Act are being made invalid by being declared void by this Court till today on the basis of that. Moreover, until it can be get justified clearly stating that the law or any of its provision challenged has been inconsistent with a certain provision of the Constitution, this Court does not declare such law or any provision of the law void.

There is no debate on the fact that the bases and processes of conferring citizenship certificate are determined by the Constitution of Nepal, 2063 and prevailing Nepal law. The procedural directives claimed void is not seen to have hooked in the person's substantive rights to obtain citizenship. This is seen to have been made provision just on what kinds of procedures and processes are to be fulfilled in order to obtain the citizenships. Nepal has maintain clear and consistent policy on citizenship in the constitution itself, and sovereignty, national independence and integrity of Nepal; and to maintain unfathomable patriotism of the Nepalese people uninterrupted, it is necessary to adopt the aforementioned policy pertaining to citizenship.

Rule is a policy document to be formed to fulfill the objective of the Act. The rights not provisioned in the Acts are not kept by adding in the Rule. If provisioned to affect in the substantive rights negatively by adding, that is voidable. In this

debate, pleading has been presented that the provision has been made in Sub-rule (3) of Rule 3 of Nepalese Citizenship Rule, 2063 so as to affect in the enforcement of the fundamental rights conferred by the Constitution by hooking the provision made by Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063 itself. The legal provision of Sub-rule (6) of the aforementioned Rule 3 has not made the provision that person found within the borders of Nepal but having paternity maternity not known shall not obtain citizenship. It has made the provision up to that patron's name, surname and address shall have to be mentioned in it by indicating the description that paternity maternity has not been traced. The petitioner is seen to have challenged that the aforementioned provision is also voidable. Upon considering pertaining to that, it is seen in the affidavit submitted on behalf of Home Ministry that the matter of the paternity/maternity not known are to be recorded in the record only and circular has been already made to all the District Administration Offices so as to leave the aforementioned Chapter in the citizenship; hence, it is not necessary to carry out constitutional examination of the aforementioned provision. Hence, the provisions of Sub-rule (6) and Rule 3 of the Rule and Point No. 10 of Citizenship Certificate Distribution Directives, 2063 are not seen to have been insistent being incongruent to Sub-articles (2), (3), 12, 13, 22 of Article 8 of the Constitution and Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063.

Upon considering towards the second issue, an application is seen to have been furnished by the petitioner, Amrit Kumar Sharma, in the District Administration Office, Kathmandu in order to obtain the citizenship certificate by attaching the photocopy of Prajapati Sharma (Timsina). In No.6 of the application form filled up by him for the sake of citizenship, the description that "identity of paternity has not been disclosed" is seen to have been mentioned in the Chapter where the father's name, surname are to be mentioned. In Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063, there is provision that the person having paternity maternity not known shall obtain citizenship certificate on the basis of descent. The matter that the paternity/ maternity of this petitioner, Amrit Kumar Sharma, not known comes to have been supported by the documents including birth registration certificate submitted.

Pertaining to the petitioner's citizenship, District Administration Office, Kathmandu is seen to have refused to confer the citizenship on date 2070/4/9 on the basis that the patron Prajapati Sharma (Timsina) has not been the patron of Amrit Kumar Sharma as per law, and parents' names, surnames and addresses have not been mentioned

in the application mentioned. Upon looking into the affidavit received from the opponent, the Home Ministry, as per the decision made on date 2069/10/5 (January 18, 2013 A.D.) from the Deputy Prime Minister and Home Minister level, stating to distribute or get the citizenship distributed so that it could not be against the provisions of the Constitution and the Citizenship Act, circular is seen to have been made to all Regional and District Administration Offices on date 2069/10/7 (January 20, 2013 A.D.). In Point No. 4 of the aforementioned circular, description is seen to have been mentioned including that citizenship should be issued to the children found within the borders of Nepal, but maternity paternity not identified, through the identification of the patron by letting it happen as per that at the time when maternity paternity is identified later. From this, the present disputed issue seems to have been addressed.

In the situation that the aforementioned circular issued by the Home Ministry has addressed the present issue, the fact that the petitioner shall obtain the citizenship is justified. Now, in the course of hearing of the aforementioned circular, the opponent, District Administration Office, can make decision pertaining to the citizenship upon considering. District Administration Office, Kathmandu, had to make decision on the issue of the citizenship of the person who is found within the borders of Nepal having paternity maternity not known, which is of the person who makes demand for the citizenship by fulfilling that process necessary and appropriate to be ascertained, but it is not found to have made the decision. Primarily, District Administration Office is seen to have avoided the main issue of citizenship by raising the matter of the process of obtaining patronage by Prajapati Sharma, the person who has applied by being the patron of the petitioner addressing in the direct issue of the citizenship as per the petitioner's claim.

As per the provision of Sub-article (3) of Article 8, of the Constitution, the state is compelled to confer or get the citizenship conferred to the person having paternity maternity not known. Pertaining to how to confer citizenship as per the aforementioned provision, though the matters of process can be determined in the directives, unnecessary conditions or hurdles are not supposed to be raised so that the substantive matters of Sub-article (3) of Article 8 of the Constitution are defeated. As per the aforementioned constitutional provision, process has to be set so as to simplify the work of conferring citizenship and the issue of citizenship shall have to get decided on the basis of that process. Hence, the decision made on the date of 2070/4/9 by District Administration Office, Kathmandu, by refusing the

provision as per Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063 and Sub-article (6) of Article 8 of the Constitution, avoiding the demand of the petitioner, is not seen to have been based on the Constitution and law. Therefore, it is decided that Sub-rule (6) of Rule 3 of Nepal Citizenship Rule, 2063 and Point No. 10 (7) of Citizenship Certificate Distribution Directives, 2063 are not seen to have been inconsistent with the Sub-article (3) of Article 8, Articles 13, 22 of the Interim Constitution of Nepal, 2063 as well as with Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063; hence, the writ petition shall be quashed up to that inconsistency. Constitutional and legal provision are seen to have been made in Sub-article (30 of Article 8 of the Constitution and Sub-clause (3) of Clause 3 of Nepal Citizenship Act, 2063, stating that the person found within the borders of Nepal, having paternity maternity not known, shall obtain the citizenship on the basis of descent; hence, the decision made by District Administration Office, Kathmandu, on the date of 2070/4/9 (July 24, 2013 A.D.), and the functions and actions connected with that have been revoked with the Certiorari Order as per Sub-article (2) of Article 107 of the Constitution. Now, upon the application form furnished by the petitioner for the sake of Nepalese citizenship, by looking into the spirit of the aforementioned Constitution, Act and Rule, with considering upon the condition of the Petitioner as well, Mandamus order is decided to be issued in the name of the opponent, the District Administration Office, Kathmandu, stating to confer the by adopting decision needed upon conferring citizenship of descent by indicating the description if paternity maternity is not seen to have been known. In the present case, though issue has been raised by the opponent, District Administration Office through the information letter of the date of 2070/4/14 (July 29, 2013 A.D.), despite being able to decide by examining additional matters on this, it does not appear that decision has been made as per this. By simply raising the issue upon the status and process in connection to the person found within the borders of Nepal but having paternity maternity not known, it is not right to say that the petitioner shall not obtain the citizenship. No decision is found to have been pronounced by the District Administration Office either, upon whether or not the petitioner shall obtain the citizenship as per the application furnished by the petitioner for the sake of citizenship. If any condition is seen that the petitioner shall not obtain the citizenship, it is the duty of the opponent, District Administration Office, to assist the Court by sending affidavit and authorized documents by mentioning the base and reason of that. By defying the Court order by not sending even the affidavit, District Administration

Office, Kathmandu is seen to have not extended the support in the accomplishment of the justice. The defiant Office and its Chief who have not sent the affidavit along with reason and authorized documents as per demanded are supposed to be irresponsible and undisciplined. Such actions can never be acceptable. Send by writing to the official, who made the decision pertaining to the petitioner's citizenship on date 2070/4/9 (July 24, 2013 A.D.) and to the Office, which ignored to send the affidavit, through the Government of Nepal, Home Ministry in order to make aware upon the responsibilities and duties stipulated by the law. By giving the opponents the information of the present

case through the Office of the Attorney General, submit the document file as per Rule by striking off the record of the case file.

Justice

We accept the afore stated opinion.

Justice

Justice

Bench Officer: Bhim Bahadur Niraula

Computer: Gita Ghimire

Done on : 2072/01/03/05 (Thursday, 18th April, 2016)



Phagun 17, 2072 (29th February, 2016)

Supreme Court,

Division Bench

Right Honorable Chief Justice Kalyan Shrestha

Honorable Justice Jagadish Sharma Paudel

Order

070-WO-0876

Subject: Mandamus

Kiran Khadki, a resident of ward No 4 of Kirtipur Municipality of Kathmandu district.....1	
Sarita Khadgi, a resident of ward No 4 of Kirtipur Municipality of Kathmandu district1	Applicant
Vs.	
The Office of Prime Minister and Council of Ministers, Singhadurbar, Kathmandu1	
Ministry of Home, Singhadurbar, Kathmandu.....1	
Ministry of Federal Affairs and Local Development Singhadurbar, Kathmandu1	Opponent
Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs Singhadurbar Kathmandu1	
District Administration Office, Kathmandu.....1	

Brief fact and decision of the present writ petition that has been submitted by being fallen under the jurisdiction of this Court as per Article 107 (2) of the Interim Constitution of Nepal, 2063 are as follows:

An unidentified person, name, surname not known married me, Sarita Khadgi, of the petitioners, on date 2047/7/10 (October 27, 1990 A.D.) by deceitfully pretending of marriage, and son, Kiran Khadgi, was born on date 2051/12/30 (April 13, 1995 A.D) at my parental home in Kathmandu district, Kirtipur Municipality, Ward No. 4. After the birth of the son, the husband disappeared and his name, surname, address also have not been known yet; hence, condition is that I am living at the parental home. Presently, the age of the son is suitable to obtain citizenship; hence, when I went to District Administration Office, Kathmandu on date 2070/4/28 (August 12, 2013 A.D.) for the sake of citizenship certificate by filling up the form of Schedule 1 attaching with the recommendation of Kirtipur Municipality, Ward No. 4 and the birth registration certificate of the son, I was returned without registering the application by making oral order that son could not be provided with citizenship without father, descent means father;

but, citizenship has been extremely necessary for the sake of studies as well as doing other works for my son.

I, Kiran Khadgi, of the petitioners, am being nurtured, educated and provided health treatment by my mother, Sarita Khadgi. I have been grown up, raised and educated under the patronage of the single mother since I was born. I have not known even the name of my father. I have not seen the face of the father yet. Mother has worked hard to give birth, raise, bring up and educate me. Hence, I also want to obtain and make my identity by mother's name. Citizenship is an important basic document for the sake of any person. Citizenship certificate is compulsory for the citizen for the sake of obtaining facilities and rights conferred by the state and for acquiring opportunity. It is sure on one hand that personal events of the person deprived of the citizenship cannot be registered, on the other hand, ownership of the property cannot be acquired, one has to be deprived of the education and employment, industry, business, trade and banking transactions cannot be carried out. It is not identified that the person without citizenship belongs to which country either; hence, despite

being a human by nature, he/she becomes non-existent upon being deprived of the basic human rights by being legally without rights.

After Kirtipur Municipality provided recommendation on date 2070/4/28 (August 12, 2013 A.D.) as per above, we went to District Administration Office for the sake of citizenship certificate tens of times, but by giving oral order that citizenship could not be provided, we were made depressed; hence, we have come to the esteemed Court to furnish present writ petition. In Article 8 (2) (B) of the Interim Constitution of Nepal, 2063, there is constitutional provision that “if a person father or mother was a citizen of Nepal at the time of his/her birth, such person shall be a citizen of Nepal by descent.” Similarly, in Clause 3 (1) of Nepal Citizenship Act, 2063 also there is the provision suitable to the aforementioned Constitution. We, the petitioners, are the complete Nepalese citizens. The parents of mine, Kiran Khadgi, of the petitioners, are also Nepalese citizens. There is clear provision in the Constitution and in law that if any one of father or mother is a Nepalese citizen, his/her children shall be the citizens of Nepal by descent; but I, Kiran Khadgi, the petitioner, has been deprived of obtaining citizenship certificate simply because my father has not been identified; hence, extreme injustice has been meted out.

As per the provision in Rule 3 (1) of Nepal Citizenship Rule, 2063, that form of Schedule 1 is to be filled up by a person over 16 years of age who wants to obtain Nepalese citizenship certificate, attaching with Nepalese citizenship certificate of his/her father or mother or the relative within three generations and the recommendation made by the local body concerned by exposing birthplace and relationship and replica copy of the birth registration certificate, even if all the processes were fulfilled, we were refused to obtain citizenship certificate; hence, our right conferred by the Article 8 (2) (B), Article 10 of the Interim Constitution of Nepal, 2063 and Article 13 (1) (2) (3), Article 20 (1) (3) of the same, Clause 3 (1) of Nepal Citizenship Act, 2063 as well as the right conferred by the international Human Rights Law in which Nepal is a party, to obtain citizenship and to provide our children with citizenship has been affected; hence, order, command including mandamus, whichever is needed, should be issued on the name of the opponents to provide citizenship of descent to me, the petitioner Kiran Khadgi, the son of Sarita Khadgi, by mother's name. Petition reads as above.

What has happened on this; why is not the order supposed to be issued as per the demand of the petitioner; by providing information to submit affidavits within 15 days from the date of this order received, except the journey time, through the Office

of the Attorney General by keeping the document file concerned together, do as per rule after the affidavit arrives or the time limit expires. Order of this Court, of the date of 2071/3/4 (June 18, 2014 A.D.), reads as above.

The opponent writ petitioners are not seen to have been able to clearly mention what, what kinds of acts and actions or the decisions of the Government of Nepal, Office of the Prime Minister and the Council of Ministers have breached in the opponents' what, what kinds of constitutional and legal rights. This Office is not supposed to be made an opponent on the issue of providing citizenship. It is not right to file writ petition by making this Office an opponent even upon the acts, actions and decisions happened and made by other bodies and lien on posts, which/who are authorized to carry out work as per prevailing law. By complying with or getting the Constitution and law complied with, Office of the Prime Minister and the Council of Ministers is committed to realize the concept of rule of law and to respect, protect and promote the rights of the citizens conferred by the Constitution and law. So far as the issue of the acquisition of the citizenship claimed by the petitioner is concerned, regarding this, the Interim Constitution of Nepal, 2063 as well as Nepal Citizenship Act, 2063 has made provision that the citizens of Nepal can obtain citizenship based on equality without discrimination. It is not right to say otherwise to the matter that upon abiding by the rule, process determined in the Citizenship Act, Rule, the party, who requests to obtain citizenship certificate of Nepal, shall have to furnish application, according to rule, to the body concerned. It cannot be said that the lien on posts, who have legal duty to provide citizenship certificate, must provide the citizenship certificate to the opponent petitioners ignoring the rule and process determined in the law. Upon looking into the context of obtaining citizenship of Nepal by mother's name, in the petition of writ No. 0703 of the year 2067 B.S. having including Sabian Damai versus including this Office, directive order was issued on date 2067/11/15 (February 27, 2011 A.D.) on the name of the Ministry of Home Affairs to provide the citizenship of Nepal to the petitioner by mother's name, to arrange necessary provisions by issuing circulation on the names of all the C.D.Os. across the country to provide citizenship certificate easily by mother's name if the children, who were born in Nepal from Nepalese citizen mother, come to ask for citizenship by mother's name by fulfilling the rule and process of Nepal Citizenship Act, 2063 and Rule of the same; and for the sake of its implementation, it was sent, by writing to the Ministry of Home Affairs, on date 2068/3/6 (June 20, 2011 A.D.); letter for information of 3 points

circulation has also been received, that circulation was made by the Ministry of Home Affairs for all the District Administration Office through the letter of the date of 2068/5/5 (August 22, 2011 A.D); hence, condition does not exist to issue order in the context of the same issue by the esteemed Court; hence, the writ petition should be revoked. Affidavit of the Office of the Prime Minister and the Council of Ministers reads as above.

The petition pleading of the opponent has been just that citizenship was not provided by mother's name by the body concerned as per Interim Constitution of Nepal, 2063 and other law, and this Ministry has no involvement in the act of providing citizenship; hence, the writ petition which has been filed by making this Ministry, an irrelevant body, is meaningless, hence should be revoked. Affidavit of Law and Justice Ministry reads as above.

The opponent writ petitioner has mentioned in the petition furnished for the sake of citizenship to District Administration Office to obtain citizenship certificate that father's identity has not been exposed; hence, citizenship certificate has not been provided. The petition pleading that husband's name, surname, address is not known even up to 4 years of getting married is blurred in itself. From this, it is clear that the petition has come to the Court without clean intention. Moreover, writ petition cannot be filed making this Ministry an opponent even upon the acts, actions and decisions made by the other bodies and lien on posts authorized to perform act as per prevailing law. For the sake of implementation of the order made by the esteemed Court on the case of Sabina Damai, circulation was made for all the District Administration Offices through the letters of the date of 2068/5/5 (August 22, 2011 A.D) and the date of 2069/10/7 (January 20, 2013 A.D.); hence, condition does not exist to issue re-order on the same issue; hence, writ petition should be revoked. Affidavit of the Ministry of Home Affairs reads as above.

The opponent writ petitioner is not found to have been able to expose any reason and ground to make this Ministry an opponent; hence, in connection to this Ministry, the writ petition of the opponent is revocable in prima facie. The opponent has not been able to mention anywhere in her writ petition, stating that this Ministry has this, this kind of legal duty and liability, but has not fulfilled that duty and liability or has refused to fulfill. On the ground including the precedent propounded by esteemed Court stating that mandamus shall not be issued so far as the duty and liability has not been burdened by law, writ petition should be revoked. Affidavit of the Ministry of Federal Affairs and Local Development reads as above.

In connection to the opponent belonging to this district, requesting the description that citizenship certificate is being provided if, by filling up the form of Schedule-1 determined by law for the sake of obtaining Nepalese citizenship certificate, this form is submitted along with the documents including the recommendation of the local body, replica copy of the citizenship certificate of the parents, copy of the elder brother or the relative within the three generations exposing lineage if that is not available, and replica copy of the relationship certificate, identification done by the parents or the persons tallied by the citizenship, identification of brothers or nearest guardian within three generations if that is not available, other evidence exposing lineage if the aforementioned certificates cannot be submitted, educational certificate or birth registration certificate or minor certificate; the writ petition filed by making this Office an opponent, mentioning false description, as per mentioned by the writ petitioner in the writ petition, that reply has been given saying that citizenship could not be provided to the son without father and that descent meant father, should be revoked. Affidavit of District Administration Office reads as above.

In the present writ petition submitted upon being inducted to the cause list as per rule, learned advocate Ms. Meera Dhungana, present on behalf of the petitioner, pleaded that upon having relationship with the person, whose name, surname, address not known, the petitioner, Kiran Khadgi, was born on date 2051/12/30 (April 13, 1995 A.D.), and condition was that they were living at parental and maternal uncle's home. As Kiran Khadgi, of the petitioners, completed the age for the sake of obtaining citizenship, when they went to District Administration Office to furnish application, upon filling up Schedule form for the sake of citizenship certificate attaching with it the recommendation of Ward Office, birth registration certificate, they were refused to be provided with citizenship by descent by mother's name, giving oral reply by saying that citizenship could not be provided to the son without father and that descent meant father; hence, his right conferred by the Constitution and law to obtain citizenship by mother's name had been breached and condition was created for them to become without citizenship; hence, mandamus should be issued on the names of the opponents to provide Nepalese citizenship certificate by decent to the petitioner, Kiran Khadgi, by mother's name, and learned joint attorney, Mr. Kiran Paudel, present on behalf of the opponents, pleaded that there was no obstruction to obtain citizenship if the petitioners furnished application attaching to it the evidence document determined by the law for the sake of obtaining citizenship certificate. There

was no condition of the refusal made not to provide citizenship as per pleading held by the petitioners; hence, writ petition should be revoked.

Upon hearing the pleading made by the learned advocate and learned joint attorney as per above, by studying the document file and documents, it appears that decision is supposed to be made on the issue whether order as per petition claim is to be made or not.

Upon considering towards the decision, petition claim seems to have been that an unidentified person, whose name, surname, address not known, married her, the petitioner, Sarita Khadgi, on date 2047/7/10 (October 27, 1990 A.D.), by deceiving, and the petitioner, Kiran Khadgi, was born on date 2051/12/30 (April 13, 1995 A.D.). Father disappeared after the birth of the son; hence, they were living at parental and maternal uncle's home. Presently, the age of the petitioner, Kiran Khadgi, was complete for the sake of obtaining citizenship; hence, when they went to the opponent District Administration Office on date 2070/4/28 (August 12, 2013 A.D.) to furnish application for the sake of citizenship certificate by filling up the Schedule form and attaching to it including the recommendation of the Ward Office, they were refused to be provided with citizenship by descent by mother's name, giving oral reply that citizenship could not provided to the son without father and that descent meant the father; hence, the petitioner became deprived of different opportunities, and the right conferred to them by the Constitution and law to obtain citizenship by mother's name was breached; hence, mandamus should be issued on the names of the opponents to provide Nepalese citizenship certificate to the petitioner, Kiran Khadgi, by descent by mother's name. In the affidavits of the opponents, the Office of the Prime Minister and the Council of Ministers and the Ministry of Home Affairs, description is seen to have been mentioned stating that circulation had already been made on date 2068/5/5 (August 22, 2011 A.D) for all the District Administration Offices to provide citizenship certificate by mother's name easily by fulfilling the procedure of the Citizenship Act and Rule if the person, who was born to a Nepalese citizen mother came to ask for the citizenship by mother's name; whereas, in the affidavit of the opponent, District Administration Office, description is seen to have been mentioned that citizenship certificate is being provided if application is furnished upon attaching to it the evidence documents as per prescribed by law, and that reply that it could not be provided to the son without father was not given.

As per mentioned above, it is seen from the writ petition and the description of the affidavits that the petitioner, Kiran Khadgi, wants to obtain Nepalese

citizenship certificate by descent by the name of mother, Sarita Khadgi, showing the reason that the petitioners' father, husband has been disappeared, and condition appears that he is yet to obtain the citizenship. Upon the pleading held by the writ petitioner that the opponent District Administration Office has refused to be provided with citizenship by giving oral reply that citizenship by descent could not be provided by mother's name without father, opponent District Administration Office is seen to have mentioned the description in its affidavit up to that if citizenship certificate is demanded by fulfilling the rule of the law, citizenship certificate is being provided. No pleading is seen to have been held stating that citizenship as per the demand made by the petitioner cannot or shall not be obtained.

In Article 8 (2) (B) of the Interim Constitution of Nepal, 2063, there is provision that if the father or mother was a citizen of Nepal at the time of his/her birth, such person shall be a citizen of Nepal by descent and this provision is seen to have been continued in the Article 11 (2) of the present Constitution of Nepal. Similarly, legal provision is seen to have existed in Clause 3 (1) of the Nepal Citizenship Act, 2063, stating, "If the father or mother was a citizen of Nepal at the time of the birth of a person, such person shall be a citizen of Nepal by descent." As per the aforementioned constitutional and legal provisions, it is seen that for the sake of the Nepalese citizenship by descent to be obtained by any person, his/her father or mother must be a Nepalese citizen at the time of his/her birth.

Writ petitioner, Sarita Khadgi, is seen to have held the pleading that husband disappeared after the birth of the petitioner son, Kiran Khadgi, that she did not know even his name, surname, address and that she wanted to provided citizenship certificate by her name, and the petitioner, Kiran Khadgi, is seen to have held the pleading that he has been raised by mother upon nurturing and that he has not even seen his father; hence, citizenship certificate shall be obtained by mother's name. As per the aforementioned constitutional and legal provisions, no obstruction is seen to have existed to obtain citizenship certificate by a person having any one of his/her father or mother a Nepalese citizen. The matter that the petitioner, Sarita Khadgi, is a Nepalese citizen is seen from her citizenship certificate issued by District Administration Office on date 2044/12/18 (March 31, 1988 A.D.) attached to the document file. Regarding this, in the writ of mandamus having including Sabina Damai versus including the Government of Nepal, Office of the Prime Minister and the Council of Ministers (N.L.M. 2068 Number 2, Page 247 D.No. 8557), mandamus

order, as well, is seen to have been issued, stating “the petitioner, Sabina Damai, is seen to have been born from the Nepalese citizen, Ganga Maya Damai, provide the Nepalese citizenship certificate to the petitioner as per law.” It appears that the petitioner, Kiran Khadgi, the son of this Nepalese citizen, Sarita Khadgi, can obtain Nepalese citizenship certificate by descent by mother’s name.

Hence, from the ground and reason analyzed above, no pleading is seen to have been held in the affidavit of the opponent, District Administration Office, Kathmandu that the petitioner cannot or shall not obtain citizenship as per claim, and it is not right to obstruct posing unnecessary complication from providing citizenship certificate to be provided as per law; hence, it is decided that mandamus shall be issued on the name of

opponent, District Administration Office, to provide Nepalese citizenship certificate to the petitioner as per claim by fulfilling the process upon immediately calling the petitioner. Providing the information of this order through the Office of the Attorney General to the opponents, submit the document file as per rule, striking off the record of the case file.

Chief Justice

I am with the opinion.

Justice

2072/11/17/02 (Monday, 29th February, 2016)

Bench Officer: Santosh Prasad Parajuli

Computer Setting: Ramesh Acharya



Supreme Court

Division Bench

Right Honorable Chief Justice Kalayan Shrestha

Honorable Justice Gyanendra Bahadur Karki

Order

068-WO -0731

Subject: Mandamus et al

Sajda Sapkota daughter of Anita Sapkota , a resident of ward No 32, Ghhatekulo of Kathmandu Metropolis of Kathmandu district1
 Asim Sapkota son of Anita Sapkota , a resident of ward No 32, Ghhatekulo of Kathmandu Metropolis of Kathmandu district1 Applicant

Vs.

Nepal Government, Office of Prime Minister and Council of Ministers, Kathmandu1
 Ministry of Home, Singhadurbar, Kathmandu1
 District Administration Office, Babarmahal, Kathmandu1
 Chief District Officer, District Administration Office, Babarmahal, Kathmandu.....1 Opponent

Brief fact of the present writ petition that falls under the jurisdiction of this Court as per Article 32 and Article 107 (2) of the Interim Constitution of Nepal are as follows:

The right of citizenship is an extremely important right of a person, and this is such a document, that gives an identity of a person. Citizenship is the ground of acquiring the rights conferred to a person by the state. The person, who does not possess the citizenship that remains as natural right of an individual, neither has an identity nor can get an opportunity of the attainment of right provided by the state. However, we, the petitioners, Sajda Sapkota and Asim Sapkota, are the persons who have been deprived of the citizenship. We were born from the mother, Anita Sapkota and father Shamim Siddaqui on date 2044/3/14 (June 28, 1987 A.D.) and date 2050/11/4 (February 16, 1994 A.D.) respectively. On date 2053/8/6 (November 21, 1996 A.D.), father deserted mother and went to his ancestral house at the place called Dumkhan of Bara district, and has not looked for our whereabouts, and when we searched for him, we could not trace this father. This father has disappeared without even getting us to meet with and introduce to his house and family; hence, since it was impossible for us to obtain

citizenship through his name, we wanted to obtain our identity through the name of the mother, Anita Sapkota, who has been nurturing and providing education for us, then we furnished application in Ward No. 32 of Kathmandu Metropolitan City for the sake of recommendation on date 2068/8/6 (November 22, 2011 A.D.), and the Ward Secretary of the Ward provided recommendation for the sake of citizenship certificate on the form of Schedule 1. After then, on date 2068/8/7 (November 23, 2011 A.D.), we furnished the application to the District Administration Office for the sake of obtaining citizenship certificate along with that recommendation, but the application was returned by giving oral information that we could not get citizenship, without registering our application nor even looking at our application, and again our application was refused to get registered on date 2068/9/13 (December 28, 2011 A.D.) as well; hence, we, who are the children of Nepalese citizens and who were born in Nepal and have been studying by residing in Nepal, are compelled to live in stateless condition in our own country upon being deprived of our right of identity; hence, we have arrived to furnish this application as per Article 107 (2) of the Interim Constitution of Nepal, 2063.

For the sake of obtaining citizenship by mother's name, application was furnished by fulfilling the process as per Article 8 (2) (B), Sub-clause (1) of Clause 3 of Nepal Citizenship Act, 2063 and Sub-rule (1) of Rule 3 of Nepal Citizenship Rule, 2063, but condition has surfaced to wipe out our identity by the aforementioned oral order given by the opponent, stating that citizenship could be given by mother's name, without even registering the application, and condition has appeared for us to be compelled to live in the stateless situation throughout our lives; hence, order or command including mandamus whichever is needed should be issued giving an order to provide citizenship by mother's name.

Besides our constitutional and legal provisions regarding the right of identity, every person has the right of citizenship by Article 15 of Universal Declaration on Human Rights (UDHR), 1948. Provision has been made stating that nobody shall be deprived of his/her right of citizenship gratuitously, whereas, Article 24 (2) of International Covenant on Civil and Political Right (ICCPR), 1966 has made provision that every child is registered after his/her birth and is given name, in Sub-article (3) child has the right to acquire nationality. Similarly, Article 9 (2) of Convention on Extermination of all kinds of Discriminations Against Women (CEDAW), 1979 has made the provision regarding the children, nationality, stating that the party nation shall provide right to the women as equal as that of men. In Article 7 (1) Convention on the Right of the Children (CRC), 1989, there is provision that children shall be registered immediately after birth, and that children shall get their right of nationality after they are born.

Nepal has already accepted, without any reservation, the duty emerged from all the aforementioned conventions, which have been ratified upon being party nation. In Clause 9 (1) of Nepal Treaty Act, 2047, clear provision has been made stating that the treaty ratified by Nepal shall be enforced as equal as national law of Nepal. However, the official who conferred citizenship had patriarchal mindset and behavior, we, applicants, without being able to obtain citizenship by mother's name, have been deprived of our constitutional right, right to get identity, right to obtain higher education, right to employment, right to carry out chosen occupation, right to opine freely, right to select place of residence, and right to equality, right of nationality under the international law. Hence, order or command including mandamus, whichever is needed, should be issued on the name of opponent, to provide or get the citizenship provided to us, the victimized petitioners, so as to interpret it by the esteemed Court in connection to the victims like us who are remaining in the country. Moreover, this is an issue

of an extreme sensitivity and public concern; hence, the present writ petition should be heard by keeping it in first priority. Joint writ petition of including Sajda Sapkota reads as above.

What has happened on this and how? If there is ground and reason why the order as per the petitioner's claim is not supposed to be made, sending notices on the names of the opponents to submit affidavits within 15 days except the journey time limit by road from the date of this order received, submit as per rule after the affidavit is furnished or the time limit is elapsed. Moreover, upon looking into the content and graveness of the present writ petition, first priority has been given as per Rule 5 (A) of Supreme Court Rule, 2049. Order of this Court, of the date of 2067/11/2 (February 14, 2011 A.D.), reads as above.

The opponent petitioner is not in the condition of being unable to mention in the petition clearly about what kind of work and function or decision of this Office has breached what kind of constitutional and legal rights of the petitioner. Regarding the acquisition and termination of the citizenship, the body and lien on post, who is bestowed with legal duty to confer citizenship, cannot set back from that legal duty of theirs if application is furnished in front of the authorized official or body by fulfilling the method, process, and work procedure prescribed in the Interim Constitution of Nepal, 2063 and Nepal Citizenship Act and Rule. If any lien on post who has to abide by the legal duty refuses to abide by his/her legal duty, the stakeholder can furnish complaint in front of the prescribed official for the sake of the punishment upon such lien on post as per Nepal law. However, these petitioners are not seen to have furnished complaint in front of the prescribed official for the sake of getting the legal duty abided by. By remaining under the Constitution, Citizenship Act and Rule, this Office is committed to ensure, by securing, the use of constitutional right to get the citizenship of Nepal for all who are qualified to obtain citizenship of Nepal. For this purpose, as per order made by the esteemed Court on date 2067/11/15 (February 27, 2011 A.D.), on the mandamus petition of writ No. 0703 of the year 2067 having petitioner Sabina Damai versus including this Office as opponent, by issuing circulars nationwide on the names of all the Chief District Officers, letters have already been sent upon writing to the Ministry of Home Affairs by means of the letter of the date of 2068/3/6 (June 20, 2011 A.D.) in order to provide the petitioner, Sabina Damai, with the citizenship of Nepal by mother's name as per law, and to easily provide citizenship if the children who were born in Nepal from the Nepalese citizen mother come to ask for citizenships by mothers' names by fulfilling rule and work procedure of Nepal Citizenship Act, 2063 and

the Rule of the same; hence, present writ petition should be revoked. Affidavit of the Office of the Prime Minister and the Council of Ministers reads as above.

As per the prior order issued by the esteemed Court for providing citizenship by mother's name, circulars have already been sent to all the Chief District Officers to easily provide citizenship certificate by mother's name by fulfilling rule and work procedure of Nepal Citizenship Act and Rule if children who were born in Nepal from Nepalese citizen mother come to ask for citizenship by mother's name; Affidavit of the respondent, the Office of the Prime Minister and the Council of Ministers, reads as above; and, whether the father of the petitioners is from home country or a foreigner has not been traced and marriage registration of the parents is not available and rule to be fulfilled as per Citizenship Act and Rule has not been fulfilled; hence, citizenship has not been provided. Affidavit of Chief District Officer, Ratna Raj Pandeya, on behalf of District Administration Office, Kathmandu reads as above.

No decision or order has been issued by this Ministry regarding whether or not the writ petitioners are to be conferred with Nepalese citizenship certificate; hence present writ petition should be revoked. Affidavit of Sushil Jung Bahadur Rana, Secretary of the Ministry of Home Affairs, on behalf of the same, reads as above.

In the present case that has been submitted before the this Bench today upon being inducted to the daily cause lists as per rule, advocates Ms. Mira Dhungana and Ms. Gautam, present on behalf of the petitioners, pleaded, stating that there was no dispute that the petitioners were the children of Nepalese citizen Anita Sapkota, and that their father, Shamim Siddiqi, had disappeared; hence, these petitioners were the citizens of Nepal by descent as per the provisions of Article 8 (2) (B), of the Interim Constitution of Nepal, Clause 3 (1) of Nepal Citizenship Act, 2063; hence, the petitioners had furnished application before the opponent, Kathmandu District Administration Office, for the sake of obtaining citizenship by mother's name upon fulfilling the process of Rule 3 (3) of Nepal Citizenship Rule, 2063, but, as per oral order of the opponent Chief District Officer, these petitioners had been rendered into the condition of without citizenship and statelessness, by not providing citizenship certificate, and hence were deprived of including the legal right to be obtained as a citizen as well as the constitutional right to obtain citizenship; hence, necessary order should be issued on the name of the opponents giving mandamus order to provide the petitioners with the citizenship by mother's name, interpreting that citizenships should be provided for the other victims like them through

mothers' names.

Joint-attorney, Mr. Shyam Kumar Bhattarai, present on behalf of the opponent, the government of Nepal, pleaded, stating that guideline had been given to provide citizenship by mother's name. Father's name had been mentioned in the present case; in this condition District Administration Office had felt uneasy; however, in the context of the case of Sabina Damai on behalf of the Government, as well; being committed to the issue of providing citizenship by mother's name, the government had issued out the circular to all the District Administration Offices; hence, the present writ should be revoked.

Upon hearing including the pleadings presented by the learned on behalf of the petitioners and respondents, while studying the documents attached to the document file, is order supposed to be issued as per petition claimed or not? It seems that decision is to be made regarding it.

Upon considering towards the decision, main petition claim is found to have been that the petitioners had furnished application to the respondent, District Administration Office, for the sake of citizenship upon getting recommendation from the Office of Ward No. 32 of Kathmandu Metropolitan City as per the provision existing in the Citizenship Act and Rule for the sake of obtaining citizenship through the name of the mother, Anita Sapkota, but were returned, without even registering the application, orally saying that they could not obtain citizenship; hence, appropriate order including mandamus should be issued on the name of respondents giving order to provide the petitioners with the citizenship of Nepal by mother's name. Affidavit of the respondent, the Office of the Prime Minister and the Council of Ministers, is seen to have been that circular had already been sent, on the names of all the Chief District Officers, as per prior order made by the esteemed Court to provide citizenship by mother's name, in order to easily provide citizenship certificate by mother's name by fulfilling the rule and work procedures of the Nepal Citizenship Act and Rule if children, who were born in Nepal from the Nepalese citizen mother, come to ask for the citizenship by mother's name; and the affidavit of District Administration Office, Kathmandu is seen to have been that it was not traced whether the petitioners' father was a from home country or a foreigner and that parents marriage registration was not done, moreover, the rule to be fulfilled as per Citizenship Act and Rule had not been fulfilled; hence, citizenship was not given.

In this, from the spot investigation received from the Office of Ward No. 32 of Kathmandu Metropolitan City and from the petition description attached to the document file, it is seen that between the petitioners, Sajda Sapkota, on 2044/3/14 (June 28,

1987 A.D.) and Asim Sapkota on 2050/11/4 (February 16, 1994 A.D.), are the children of Nepalese citizen Anita Sapkota, a resident of Ward 32 of Kathmandu Metropolitan City, and their father, Shamim Siddiqi, has not come to their contact and has disappeared since 2053/8/6 (November 21, 1996 A.D.). It is found to have been mentioned in the aforementioned spot investigation description that on 2041/3/5 (June 18, 1984 A.D.), petitioners' mother got married to Shamim Siddiqi, who used to say that his house was in Bara district, Dumarwan Village Development, after the births of the petitioners, petitioners' father walked away from Kathmandu on date 2053/8/6 (November 21, 1996 A.D.), saying that he would go to his house; and he could not be traced even upon searching out. The writ petitioners' mother, Anita Sapkota, has exposed that she had obtained the citizenship of citizenship certificate No. 1470/7730 by descent from District Administration Office, Kathmandu on date 2041/1/21 (May 3, 1984 A.D.); hence, there seems not dispute that their mother is and has remained Nepalese citizen by descent.

While seeing regarding the provisions made in our Constitution and law regarding citizenship, in Sub-article 1 of Article 8 of the Interim Constitution of Nepal, 2063, provision that the persons who have obtained the citizenship of Nepal at the time of commencement of the Interim Constitution and who are qualified to obtain citizenship of Nepal has been made, whereas, in Sub-article 2 provision that the person who has permanent settlement in Nepal at the time of commencement of Interim Constitution, and who has obtained the citizenship of Nepal by descent, and if father or mother was a Nepalese citizen at the time of the birth of a person, such person shall become the citizen of Nepal is seen to have been made. In Sub-clause (1) of Clause 3 of Nepal Citizenship Act, 2063, provision that if father or mother was a citizen of Nepal at the time of birth of a person, such person shall become a citizen of Nepal by descent is found to have been made, whereas, procedure to be adopted for the sake of obtaining citizenship certificate by a person who is qualified to become a citizen of Nepal as per Constitution and law is found to have been determined in Clause 8. As per Sub-rule (1) of Rule 3 of Nepal Citizenship Rule, 2063, in order to obtain citizenship certificate of Nepal by descent, provision is seen to have been made to become as follows:

- (A) Should be over 16 years of age;
- (B) Should have father or mother or the relative within three generations towards one's descendent who has obtained citizenship certificate of Nepal; and
- (C) Should have birth registration certificate recommended by Village Development or Municipality, exposing birthplace and relation,

In Schedule 1 of the aforementioned Rule, format of application is found to have been prescribed to submit application in front of the prescribed official to obtain citizenship certificate of Nepal by a person who is qualified to become a citizen of Nepal.

As per the aforementioned constitutional and legal provisions to obtain citizenship certificate, it seems that any person who is born from any person of father or mother who was a Nepalese citizen shall be qualified to obtain citizenship of Nepal. In Section (B) of Article 8 (2) of the Interim Constitution of Nepal, 2063, without stating "father and mother" but clearly stating "father or mother", a mother is also conferred with the right and status equal to the father; hence, it is seen that even if anyone of father or mother is a citizen of Nepal, such person can obtain citizenship of Nepal. Condition is also not found in the present case so that the opponents could say that the writ petitioners did not possess the qualification prescribed by the Constitution and law for the sake of obtaining citizenship. From the affidavit of the respondent District Administration Office, it is seen that the citizenship was not conferred simply on the ground that it was not traced whether father was a Nepali or a foreigner, and that parents' marriage was not seen to have been registered, and that procedure prescribed for obtaining citizenship was not fulfilled. It is not seen that the opponents' affidavits could not explain all the facts about what kind of procedure were not fulfilled, by remaining on legal ground. From the replica copy of the citizenship certificate of Anita Sapkota, spot investigation deed carried out by Ward No. 32 of Kathmandu Metropolitan City and the form filled up as per Schedule 1, the condition of the matter is being justified that the petitioners had gone to District Administration Office for the sake of obtaining citizenship certificate, along with the replica copy of the citizenship certificate of Nepal obtained by mother Anita Sapkota based on descent and by filling up Schedule form including spot investigation deed carried out by Ward No. 32 of Kathmandu Metropolitan City. From this, it is found that the statement of the District Administration Office that procedure as per law was not fulfilled in the application submitted by the petitioners for the sake of citizenship is being rebutted in itself.

So far as of seeing the statement of the opponent that citizenship certificate was not conferred based on whether the petitioners' father was from home country or a foreigner, the Constitution and law have already made the provision that the persons who have been residing in Nepal upon being born from a Nepalese citizen mother can obtain citizenship by mother's name; in this condition, to render a person, who is qualified to obtain citizenship as per Constitution and law, without citizenship by raising question whether the father was from home country or a foreigner, refusing to confer citizenship certificate, cannot be deemed

as the work congruent to law. Not to confer to the petitioners with citizenship stating that it was not clear whether the father was from home country or a foreigner is against Article 13 (1), (2) and Article 20 (1) of the Interim Constitution of Nepal, 2063, as well. It is seen that in the aforementioned Article 13 (1), provision that all the citizens are equal before law and in Sub-article (2), provision no citizen is supposed to be discriminated based on gender has been made. Similarly, in Article 20 (1) it has been accepted as a fundamental right that a woman is not supposed to be discriminated simply because she is a woman; in this condition, although it has been justified from her citizenship certificate of Nepal that the petitioners' mother Anita Sapkota is a citizen of Nepal, the work of not issuing the citizenship certificate of Nepal by showing the base that it was not traced whether the father was from home country or a foreigner, it is seen that the petitioners' mother was discriminated on the ground of just being a woman; hence, the aforementioned work of the opponent is seen to be like that of defeating the constitutional provision.

Precedent propounded by this Court is to be looked into regarding the citizenship that can be obtained by mother's name. Regarding this, extensive and detailed interpretation has been made in the case of including Sabina Damai versus the opponent Office of the Prime Minister and the Council of Ministers (N.L.M 2068 Number 2, D. No. 8557). In the aforementioned case, precedent has been propounded that no citizen can be deprived of obtaining citizenship certificate by any official prescribed by not understanding the constitution, law and covenant relating to human rights or by giving wrong logic and meaning of the law, and that hardship has to be faced in order to obtain citizenship certificate cannot be acceptable; even if anyone of the parents is a citizen of Nepal, such person can obtain the citizenship of Nepal.

According to the aforementioned constitutional and legal provisions and precedent doctrine, the person, who was born from a Nepalese citizen father or mother in any geographical part of Nepal, has the right to obtain citizenship certificate from that same district. Without being a citizen, no one can exercise political and civic right, to acquire immovable property, exercise the right to take part or cast vote in any elections or exercise the rights that are to be exercised only by the Nepalese citizens. After having been qualified due to being born in Nepal and after furnishing application in the format prescribed in the law by fulfilling necessary rule, it is a right of every qualified person to obtain the citizenship certificate of Nepal by easy and simple manner. However, in the situation of the application furnished by fulfilling the minimum process as per law for the sake of obtaining citizenship, on the ground of the aforementioned precedent propounded by this

Court, instead of helping in friendly manner in the sensitive issue such as citizenship, the opponents are found to have made the petitioners lingering by refusing to confer citizenship certificate, pretending this and that. Such work cannot be considered as responsible and legal work.

Hence, petitioners' mother has possessed the citizenship of Nepal and their father has been disappearing; hence, there is no obstacle present in conferring citizenship by mother's name and mandamus has already been issued before this by this Court on this issue; but, even though all the District Administration Offices are seen to have been circulated, the work of not conferring the petitioners with the citizenship by mother's name is unjust; hence, it is decided that mandamus is supposed to be issued on the name of the opponents to immediately confer them with the citizenship by mother's name.

Moreover, though the condition that it has been explained in the affidavit of the opponent the Office of the Prime Minister and the Council of Ministers that circular has already been done for the universal enforcement of the aforementioned precedent of Sabina Damai, and in course of pleading, the joint attorney of the government side has explained that the government is always positive regarding conferring the certificate is present, petitions have been frequently furnished stating that citizenship could not be obtained by mother's name; from this, this Court feels that condition is still existing in which the petitioners have been facing complication in vain. The condition to obtain citizenship by mother's name is a difficult condition in itself; hence, it appears that if negative thought is retained towards this, additional inconvenience is put on the marginalized women. Hence, according to the spirit of the order made in the present case and the order made in the case of Sabina Damai, it is decided that directive order shall be issued on the name of the Government of Nepal to confer and to get the citizenship conferred by mother's name easily in the condition that the citizenship is supposed to be obtained, without posing unnecessary complication, in the cases of such circumstances, arrange provision to monitor as well for not letting any complaint remain regarding this by setting up complaint hearing mechanism under the Ministry of Home Affairs. By providing information of this decision to the opponents through the Office of the Attorney General, strike off the record of the writ file and do with the document file as per rule.

Justice

I am with the decision

Chief Justice

Bench Officer: Indira Sharma

2072/12/02/03 (Tuesday, 15th March, 2016)

Supreme Court

Division Bench

Honorable Justice Gopal Parajuli

Honorable Justice Govinda Kumar Upadhyaya

Decision

071-WO-0903

Subject: Mandamus et al

Bipana Basnet, being a resident of ward No 9 of Dharmasthali VDC (Currently Tarkeshwor Municipality) of Kathmandu district, daughter of Dilip Man Singh Basnet currently living at ward No. 32 Dillibazar of Kathmandu Metropolis of Kathmandu district	1	
Rinex Basnet, son of Bipana Basnet, a resident of ward No 8 of Kirtipur Municipality of Kathmandu district currently living at ward No. 32 Dillibazar of Kathmandu Metropolis of Kathmandu district	1	Petitioner
Vs.		
Nepal Government, Office of Prime Minister and Council of Ministers, Singhadurbar, Kathmandu	1	
Nepal, Ministry of Home, Singhadurbar, Kathmandu	1	
Nepal Government Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, Singhadurbar, Kathmandu	1	Respondent
Nepal Government, Ministry of Women, Children and Social Welfare, Kathmandu	1	
District Administration Office, Kathmandu	1	

Brief facts and order of the present writ petition that has been submitted to upon being fallen within the jurisdiction of this Court as per Article 107(2) of the Interim Constitution of Nepal, 2063 are as follows:

We, the petitioners, are the victims, of being deprived of the rights to obtain citizenship and provide citizenship by own name, which have been conferred by the Interim Constitution as per Article 107 (2) of the Interim Constitution of Nepal, 2063. Of the petitioners, I, Bipana Basnet, had a love marriage with Rabi Adhikari in 2044 B.S. (1987/88 A.D.), and the son, Rinex, was born on date 2051/2/24 (June 7, 1994 A.D.). After the son's father expelled me from home in 2053 B.S. (1996/97 A.D.), relationship between Rabi Adhikari and me was divorced in Ashadh 30, 2054 B.S. (July 14, 1997 A.D.). I, petitioner, have been carrying out all the

responsibilities of nurture and education upon retaining the son/daughter under my patronage. Since father had not nurtured, educated and met, the son kept my surname; and my surname (Basnet) has been kept in school and in all the certificates including character certificates. When we went to District Administration Office, Babarmahal Kathmandu, to make citizenship upon carrying recommendation to make citizenship from Kirtipur Municipality, Ward No. 8 on date 2068/11/30 (March 13, 2012 A.D.), Assistant District Administration Officer struck off the surname, "Basnet", with pen, of the recommendation furnished stating as Rinex Basnet, and wrote "Adhikari". When we requested to provide keeping Rinex Basnet Adhikari because the son's educational certificates would be useless, he reconciled replying that only father's surname

should be kept if citizenship by descent was to be obtained because descent meant father; mother would not have descent. Thus, we kept on going to District Administration Office for 2 and a half years; however, many administrators transferred, but norm of all was the same; hence, my son's citizenship could not be obtained. Thus, due to being unable to obtain citizenship, my son has been deprived of obtaining many rights to be provided by the state; hence, we have attended to the esteemed Supreme Court by carrying this writ petition.

In Article 8 (2) (B) under Part 2 of the Interim Constitution of Nepal, 2063, there is a provision that if "father or mother" of a person was a citizen of Nepal, such person shall be a citizen of Nepal by descent. Similarly, in Sub-clause (1) of Clause 3 of Nepal Citizenship Act, 2063 also there is provision congruent to the Constitution. Of the petitioners, my, Rinex Basnet's, parents are Nepalese citizens. Clear provision has been made in the Constitution and in the Act stating that if any one of father or mother was a Nepalese citizen, his/her children shall be the citizens of Nepal; however, simply due to the reason that the petitioners, my, Rinex Basnet's, father has deserted us, I, the petitioner, have been deprived of obtaining citizenship certificate; hence, it has been a great injustice. Condition of disappearance of my identity has been emerged due to the order of the opponent No. 5.

In Rule 3 (1) of Citizenship Rule, 2063, Nepalese citizen, who wants to obtain citizenship certificate by descent and who is over 16 years of age, can obtain citizenship after fulfilling the process as per Schedule 1, before the Chief District Officer concerned, by attaching the replica copies of Nepalese citizenship certificate of his/her father or mother or relative within three generations, and recommendation made by the local body to expose birthplace and relationship or the birth registration certificate; due to the reason that citizenship is going to be obtained by identifying by mother, oral order of District Administration Office that citizenship would not be provided by keeping up patriarchal mindset, norms and values against the provision remained in the Constitution and law has inflicted damage upon our, mother and sons' constitutional, legal right, and the right conferred by international treaties and convention, of obtaining citizenship and providing citizenship to own children.

In addition to our constitutional and legal provisions, the treaties and agreements ratified by Nepal being a party have also assumed the right to citizenship as a human right. By Article 15 of Universal Declaration on Human Rights (UDHR), 1948, every person shall have the right to citizenship. There is provision that no person shall be deprived of the right to citizenship in discretionary manner. Article 24 of

International Covenant on Civic and Political Rights (ICCPR), 1966 has made the provision that every child shall be registered immediately after birth and shall have a name; every child has the right to acquire a nationality.

Article 9 (2) of Convention on Elimination of all forms of Discrimination Against Women (CEDAW) has made the provision that state parties shall grant women equal right with respect to the nationality of their children, and provisions have been made in our Constitution and law as per that. Injustice has been incurred by depriving of the right to obtain citizenship or to obtain identity of a person by defining, the right to provide citizenship, descent in fabricated manner by the officials who provide citizenship. Likewise, Article 16 (D) has made the provision that the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children in all cases the interest of the children shall be paramount. (G) of the aforementioned Article has made the provision of the right to choose a family name, a profession and an occupation. In Article 7 of Convention on the Right of the Children (CRC), the child should be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his/her parents. The provisions of the aforementioned treaties and conventions have guaranteed the right of both the man and woman to provide citizenship. Thus, international treaties, agreements, our Constitution and law as well have provided the mother with the right to provide citizenship to her children; however, injustice has been done by not providing me, the petitioner mother, and my son, who wants to obtain identity by my name, with the citizenship certificate, by trying to render stateless, depriving of the identity. Of the petitioners, I, Bipana Basnet, have been providing patronage of the petitioner, Rinex Basnet, being a single mother. Condition is that my husband has gone away since my son was small, by getting divorced. As per clear provision that mother can provide identity by providing citizenship to her children pursuant to Article 8 (2) (B) of the Interim Constitution of Nepal, 2063, Clause 3 (1) of Nepal Citizenship Act, 2063, Rule 3 (1) of Citizenship Rule, 1.2 of (2) of Chapter-2 of Citizenship Distribution Procedure Directive, order, command including mandamus, whichever is needed, should be issued to provide citizenship to my son by descent by mother's name. Petitioners' petition claim reads as above.

What has happened on this? Why is not the order supposed to be issued as per the claim of the petitioner? Submit as per rule by giving first priority as per Rule 63 (3) (F) (5) of Supreme Court Rule, 2049

upon issuing summon notice to submit affidavit within 15 (fifteen) days except for the journey time limit by road, through the Office of the Attorney General, by explaining if there is reasonable ground and reason for not issuing order. Order of this Court, of the date of 2072/2/27 (June 10, 2015 A.D.), reads as above.

Nothing has been mentioned in the petition regarding what, what kinds of involvement this Office has on the issue, claimed by the opponent petitioner. No ground and reason to make this Office an opponent has been mentioned in the petition. Present petition that cannot establish basic fact why this Office is supposed to be made an opponent for not fulfilling what, which responsibility as to be fulfilled as per the Constitution and law is revocable in prima facie. On the issue regarding acquisition of the citizenship claimed by the petitioner, provision is found to have been made by the Interim Constitution, 2063 as well as Nepal Citizenship Act, 2063 that the citizens of Nepal shall obtain citizenship of Nepal without discrimination on the ground of equality. It cannot be said otherwise that the party, who asks for the citizenship certificate of Nepal, shall have to furnish application suitable to rule to the body concerned by complying with the rule, process and procedure based on Citizenship Act and Rule. In this condition, being under the prevailing law, the lien on posts having legal duty to provide recommendation for citizenship and citizenship certificate shall have to provide citizenship certificate to the Nepalese citizens as per rule, process and procedure determined in law. As far as looking into the context of the issue of providing citizenship of Nepal by mother's name, on date 2067/11/15 (February 27, 2011 A.D.) having including Sabina Damai as petitioner versus including this Office as opponent, directive order was issued on the name of Ministry of Home Affairs to "provide the petitioner citizenship of Nepal by descent, arrange necessary provision by issuing circulation on the names of all the C.D.Os. nationwide to easily provide citizenship certificate by mother's name by fulfilling rule and procedure of Nepal Citizenship Act, 2063 and Rule of the same if the child, who was born in Nepal from a Nepalese citizen mother come to ask for citizenship by their mothers' names, and move forward necessary and effective step to eradicate such bad traditions, practices customs still remaining in the society," and for the sake of its implementation, it was sent by writing to the Ministry of Home Affairs through the letter of the date of 2068/3/6 (June 20, 2011 A.D.) of D.No. 289 of this Office; and letter for information of 3 points circulation made for all District Administration Offices, through the letter of L.No.N. and A.S. 2068/69 D.No. 147 of the date

of 2068/5/5 (August 22, 2011 A.D), has also been received; hence, condition does not exist to issue re-order in the context of the same issue. For the aforementioned ground and reason as well, there is no condition to issue any order as per the claim of the opponent petitioner; hence, the opponent's writ petition should be revoked. Affidavit of the Office of Prime Minister and the Council of Ministers reads as above.

There is not the condition that the petitioner has held the claim stating that legal provision has remained an obstruction to obtain citizenship. The issue regarding providing citizenship does not fall within the scope of this Ministry; hence, the writ petition, filed by making unrelated body, this Ministry an opponent, appears to have been meaningless; hence, it should be revoked. Affidavit of the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs reads as above.

On the issue claimed by the opponent writ petitioner, it has not been explained in the petition regarding what, what kinds of involvement this Ministry has. It is not right to furnish writ petition by making an opponent on the issue in which this Ministry has not been involved; hence, it should be revoked in connection to this Ministry. Affidavit of the Government of Nepal, Ministry of Women, Children and Social Welfare reads as above.

If the writ petitioners furnish application before the Chief District Officer concerned by obtaining recommendation of local body concerned from the place where their father has permanent residence, its action shall be taken from the District Administration concerned. In the condition of father's name, surname, address known, due to what, what kinds of reason there is a difficulty in going to District Administration Office, upon going to the place where there is a permanent residence, obtaining recommendation of the local body concerned. Nothing has been explained in the writ petition towards this. If gone to the District Administration along with the documents determined in the Act and Rule to fulfill the documents to be submitted to obtain citizenship, all the acts and actions shall be done from right there; hence, the writ petition furnished by making an opponent in connection to this Ministry should be revocable; hence, should be revoked. Affidavit of Nepal Government, Ministry of Home Affairs reads as above.

In the present case that has been submitted upon being inducted to the daily cause list as per rule, document file and documents have been studied.

Pleading was heard, which was made by learned Pabitra Rawat, present on behalf of the petitioners, stating that upon having a love marriage of the

petitioner, Bipana Basnet, with Rabi Adhikari in 2044 (1987/88 A.D.), Rinex Basnet was born on 2051/2/24 (June 7, 1994 A.D.); father and mother got divorced on 2054/3/30 (July 14, 1997 A.D.); then, the father did not nurture, educate, meet including the child; hence, all the certificate including character certificate have been obtained from school by retaining mother's surname, "Basnet", by the son's wish. Similarly, "Rinex Basnet" has been mentioned in the birth registration certificate obtained from the Office of Kirtipur Municipality. When they went to Kathmandu District Administration Office, Babarmahal, Kathmandu on date 2068/11/30 (March 13, 2012 A.D.) by obtaining recommendation from Kirtipur Municipality, Ward No. 8 to make citizenship, Assistant District Administrator working there struck off, with pen, the surname "Basnet" mentioned in the application, which was furnished stating that citizenship should be provided as per the recommendation, and wrote "Adhikari". Hence, when requested to provide citizenship by keeping "Basnet Adhikari" because educational certificates would be useless, he did not provide, but said that only father's surname should be kept if citizenship by descent was to be obtained; citizenship was not provided by mother's surname, Basnet surname; hence, present writ was filed because there was no alternative way. When the petitioner tried to obtain by keeping surname of mother's identity, it was not right to prevent so as not to obtain that identity. The opponent did not have the authority to prevent by not providing citizenship to the petitioner who tried to retain mother's identity surname only due to that reason; hence, mandamus order should be issued to provide the opponent with citizenship as per petition claim.

Pleading was heard, which was made by learned joint attorney, Mr. Shyam Kumar Bhattarai, present on behalf of the opponent, stating that in the context of the issue of providing citizenship of Nepal by mother's name, on the writ petition of writ No. 0703 of the year 2067 B.S. having including Sabina Damai as petitioner, directive order was issued by the Supreme Court on date 2067/11/15 (February 27, 2011 A.D.) on the name of Ministry of Home Affairs to provide the petitioner with citizenship of Nepal by mother's name as per law, arrange necessary provisions by issuing circulation on the names of all the C.D.Os. nationwide to easily provide citizenship certificate by mother's name by fulfilling rule and procedure of Nepal Citizenship Act, 2063 and Rule of the same if the children were born from Nepalese citizen mothers; and circulation was made to all the District Administration Offices for the sake of its implementation; hence, there was no condition to issue re-order on the same issue; hence, the writ petition should be revoked.

In this, petition claim is seen to have maintained that upon having love marriage of the petitioner, Bipana Basnet, with Rabi Adhikari on date 2044 (1987/88 A.D.), petitioner, Rinex Basnet, was born on 2051/2/24 (June 7, 1994 A.D.); after the divorce of the parents on 2054/3/30 (July 14, 1997 A.D.), the petitioner, Bipana Basnet, has been looking after, educating the child, and all other certificates including character certificate have been acquired from school by retaining mother's surname, "Basnet" as per the son's wish, and "Rinex Basnet" has been mentioned in birth registration certificate received from Kirtipur Municipality; hence, he wants to obtain citizenship by retaining mother's surname, "Basnet". Similarly, petition claim is seen to have maintained that even upon requesting to provide citizenship by mentioning "Rinex Basnet Adhikari" by the surnames of both of mother and father, citizenship was not provided saying that only father's surname should be kept if citizenship by descent was to be obtained; hence, mandamus order should be issued. In the applicant's name, surname, and date of birth in the birth registration certificate issued by the Office of Kirtipur Municipality on date 2068/11/30 (March 13, 2012 A.D.), Rinex Basnet, son of Mr. Rabi Adhikari and Mrs. Bipana Basnet, date of birth 2051/2/24 (June 7, 1994 A.D.) is found to have been mentioned. In character certificate provided by the school and in S.L.C. mark sheet, Rinex Basnet is seen to have been mentioned. In Clause 9 of Birth, Death and Other Personal Events (Registration) Act, 2033, it is found that "the registration certificate provided as per Clause 6 shall be an evidence that personal event has occurred and such evidence can be submitted to any office or court and used in personal transaction." Mainly, upon looking into the petitioner's petition description and certificate, condition is seen that the petitioner has wanted to mention the surname in the citizenship according to the surname birth certificate and various certificates of the school.

As per above, that having claim including that the petitioner, Rinex Basnet, should be provided with citizenship by descent because both the parents are Nepalese citizens as per Clause 3 (1) of Nepal Citizenship Act, 2063, and petition claim is seen to have maintained that while trying to obtain citizenship by mentioning mother's name, Basnet, he could not obtain; and upon the application submitted to the District Administration Office by the petitioner that citizenship of Nepal should be granted, it does not appear that decision was made by explaining any ground, reason for not providing citizenship or order issued along with reason if other procedure had to be adopted regarding the citizenship. In Sub-rule (1) of the Procedure of Obtaining Nepalese Citizenship Certificate by

Descent, of Rule 3 of Nepal Citizenship Rule, 2063, “Nepalese citizens over sixteen years of age shall have to furnish application as per the format of Schedule 1 if he/she wishes to obtain Nepalese citizenship certificate by descent:

- a) Nepalese citizenship certificate of father or mother or the relative within three generations towards his/her lineage.
- b) Recommendation or birth registration certificate to expose birthplace and relationship done by the local body concerned
- c) If citizenship certificate of relative within three generations as per Section (A) is submitted, relationship verification letter to expose relationship with the aforementioned relative.”

As per above, in Sub-clause (1) of Rule 3 of Nepal Citizenship Rule, 2063, there is the provision of the procedure of obtaining Nepalese citizenship certificate by descent; but in the condition that even application stating that citizenship should be provided by submitting documents including mother’s citizenship certificate, deed of divorce done by mother with father, citizenship certificate of father’s elder brother, including Rinex’s educational certificates and birth registration, order does not seem to have been issued by explaining any ground that citizenship could not be issued by keeping “Basnet”, the surname of mother’ identity, or the surnames of both of mother and father, “Basnet Adhikari” so as to accord with the petitioner’s educational certificates as per alternatively mentioned by the petitioner in the petition. Thus, it is seen from the replica copy submitted along with the present petition that the petitioner has wanted to obtain citizenship by mother’s surname “Basnet” by mentioning father’s name, surname for the sake of obtaining Nepalese citizenship, and has furnished application before Chief District Officer, District Administration Office, Kathmandu in the format as per Schedule-1 of Citizenship Rule, 2063; and by mentioning reason that citizenship cannot be provided as per petition, if it is supposed to be additionally examined upon the application submitted as per aforementioned Schedule 1, by examining as per law, it is necessary to order or decide for the sake of coming to a certain conclusion of it, but no order or decision is seen to have been made; hence, it is seen that the issue whether the petitioner is or is not supposed to be provided with the citizenship has remained in confusing condition. Instead of rebutting by affidavit if petitioner’s description has been otherwise, the opponent, District Administration Office, Kathmandu is not seen to have been furnished the affidavit; hence, condition is also seen that the opponent, District Administration Office, has wanted to remove from the public responsibility of issuing or not issuing

citizenship as per law, without wishing to enter into the petitioner’s petition.

In Sub-article (2) of Article 11 of the Constitution of Nepal, “the following person who has his or her permanent domicile in Nepal at the time of commencement of this Constitution shall be the citizen of Nepal by descent:

- a) A person who has obtained the citizenship of Nepal by descent prior to the commencement of this Constitution,
- b) A person whose father or mother was a citizen of Nepal at his or her birth.

Petitioner’s, Rinex’s, father or mother is seen to have been a citizen of Nepal at his birth; hence, dispute is not seen to deem such person as a citizen of Nepal by descent as per aforementioned constitutional provision. In Article 12 of the Constitution of Nepal, it is found to have been mentioned “Citizenship with identity of descent and gender: A person who obtains the citizenship of Nepal by descent in accordance with this Constitution may obtain a certificate of citizenship of Nepal with gender identity by the name of his or her mother or father.” From the study of the study of the aforementioned constitutional and legal provisions, women are provided with the right equal to men and, precedent is seen to have been maintained by this Court, stating “no citizen shall be deprived of obtaining citizenship by not understating Constitution, law and covenant relating to human rights or misinterpreting law; that the matter that hardship is to be faced to obtain citizenship certificate cannot be acceptable, and that if any one of father and mother of a person is a citizen of Nepal, he/she shall obtain citizenship of Nepal (having petitioner including Sabina Damai versus including the Government of Nepal, Office of the Prime Minister and the Council of Ministers, case including mandamus, D.No. 8557); hence, on the ground mentioned by the petitioner, it is seen that the petitioner can obtain citizenship of Nepal if they want to obtain citizenship by mother’s name. After it is seen that when the petitioner, Rinex, wanted to obtain citizenship by mentioning father’s name and surname, mother was also ready to identify that matter in the office, the official concerned can issue citizenship by looking into the legal ground and evidence to mention father’s name if citizenship is seen to happen by descent. Moreover, in the petition analyzed above in the case having Sabina Damai, condition is seen that mother’s surname can be written to obtain citizenship by descent by mother’s name; hence, clear constitutional and legal ground is not seen that mother’s surname cannot be written simply because father’s name, surname is written. Thus, the Constitution, law and including precedent of Nepal have made legal provision to obtain citizenship

by mother's name, and father and mother are the equal lineage ground for the sake of children; hence, when preventing from writing mother's surname of identity, "Basnet", in the present petition simply because of wanting to write father's name, surname, or by saying that only surname should be written, it is seen discriminatory behavior in the father's or mother's surname. Moreover, while reaching to such conclusion, it shall be against the right to choose the family name of the petitioner, Rinex, and is seen to be against the equal right of man and woman. The act of the body or official authorized as per law of not providing citizenship by not explaining any appropriate ground and reason cannot be deemed as legal and appropriate behavior; hence, measures of facilitation and simplification in the act of providing citizenship to the citizens as per legal provision must be looked for, and the act of not providing citizenship or delaying in making decision on providing or not providing citizenship, without decision with reasons, cannot be proper way of implementation of law; hence, it is decided that mandamus order shall be issued on the name of the opponent, District Administration Office, Kathmandu, to make decision immediately regarding the citizenship without depriving of being provided with Nepalese citizenship certificate simply on the ground that the petitioner has wanted to write mother's surname, "Basnet", mentioned in his birth registration and certificates as per petition claim if the description explained or claimed by the petitioner is not seen otherwise, by inquiring what is to be inquired upon as soon as possible, as per the Constitution of Nepal, Nepal Citizenship Act, 2063 and Nepal Citizenship Rule, 2063.

Moreover, in connection to the citizens of such nature, particularly whose father, even upon being a Nepalese citizen, has not come into contact or has disappeared, or to those children who are in the condition that their father has hesitated to get them provided with citizenship, and those who wish to obtain citizenship by mother's name by mentioning father's surname as well, this directive order has been issued on the name of the opponent, Ministry of Home Affairs, to arrange necessary provisions by issuing circulation on the names of all the Chief District Officers nationwide not to treat differently or not to discriminate saying mother's or father's name, to make appropriate decision as per law regarding citizenship by facilitating and simplifying any Nepalese citizens who wish to obtain citizenship by mother's name according to the surname petitioner children, of birth registration or other evidence has been submitted, including on the ground including at the time of registration of those personal events, because such Nepalese citizen shall have the right to choose the surname of father or mother or any surname of identity of the ground of the both. Provide the information of this order to the opponents through the Office of the Attorney General. Submit the document file as per rule, by striking off the record of the case file.

Justice

I agree with the said opinion.

Justice

Bench Officer: Haraka Bahadur Chhetri

Computer Setting: Ramesh Acharya

2072/12/22/02 (Monday, 04th April, 2016)



Supreme Court

Division Bench

Honorable Justice Gopal Parajuli

Honorable Justice Govinda Kumar Upadhyaya

Order

071-WO-1025

Subject: Mandamus et al

Jayanti Shikari (Khanal), daughter of Guna Bahadur Shikari, wife of Badri Prasad Khanal, a resident of ward No 4 of Kathmandu Metropolis of Kathmandu district1
 Gopal Khanal son of Badri Prasad Khanal and Jayanti Khanal, a resident of ward No 12
 of Kathmandu Metropolis of Kathmandu district1 Applicant

Vs.

Nepal Government, Office of Prime Minister and Council of Ministers, Singhadurbar
 Kathmandu1
 Nepal Government Ministry of Home, Singhadurbar, Kathmandu1
 Nepal Government Ministry of Federal Affairs and Local Development Singhadurbar,
 Kathmandu.....1
 Nepal Government Ministry of Law, Justice, Constituent Assembly and Parliamentary
 Affairs, Singhadurbar Kathmandu1 Opponent
 Nepal Government, Ministry of Women, Children and Social Affairs, Singhadurbar,
 Kathmandu1
 Office of District Administration Office, Kathmandu.....1
 Office of Ward No. 4 of Kathmandu Metropolis1
 Office of Ward No. 1 of Hetaunda Municipality1

Brief fact and decision of the present writ petition that has been submitted by being fallen under the jurisdiction of this Court as per Article 107 (2) of the Interim Constitution of Nepal, 2063 are as follows:

I, Jayanti Shikari, among us petitioners, was married to Badri Prasad Khanal, who has the house at K.M.C., Ward No. 4 as a second wife and petitioner son, Gopal Khanal, was born on date 2051/8/1 (November 17, 1994 A.D.) from our conjugal relationship. My husband, Badri Prasad Khanal, went away from our contact towards 2054 B.S. (1997/98 A.D.), and has not come back yet. I, single mother, have been accomplishing responsibility including nurturing and educating the minor son; and even after completing the age, his father has not remained in contact; hence, upon going

to District Administration Office to enquire for the sake of making citizenship of the son, I received information that replica copy of the father's citizenship along with the recommendation of the Ward, and that father should come otherwise citizenship could not be provided.

The father of the petitioner, Gopal Khanal, has not been in our contact; hence, upon enquiring regarding other alternatives to make citizenship of the son, knowing that citizenship could be made by mother's name as well; when I tried for its sake, I was informed that the son had to obtain citizenship from which the citizenship of mine, Jayanti, was issued. My citizenship was issued from Makwanpur; hence when I started process to obtain citizenship by going to Makwanpur, Ward Office did not agree

to provide recommendation saying that citizenship could not be issued by retaining Khanal surname, that while obtaining citizenship by mother's name, recommendation could be provided only by the surname of the mother's citizenship (Shikari).

Khanal surname has been mentioned in all the school certificates of the son; hence, in order to obtain citizenship certificate from Kathmandu, replica copy of the father of Gopal Khanal, of the petitioner, was said to have been required; hence, upon searching out all the documents possessed by me, I was successful to find an identity card in which his Citizenship No. 3640 was mentioned. After that, when I demanded from District Administration Office for a replica copy of the citizenship by mentioning his citizenship certificate, upon demanding the replica copy of the citizenship of Badri Prasad Khanal, District Administration Office informed that No. 3640 C. record of date 2025 (1968/69 A.D.) had been tattered and torn off. Thus, the husband, who went away leaving behind the wife and the son when Gopal Khanal, of the petitioners, was just 3 years old, has not yet come into contact, and Ward Office has not made recommendation either, stating that his father's citizenship certificate is required for the sake of making citizenship certificate of the son, and even upon going to ask for the replica copy of the husband's citizenship certificate, it also could not be obtained from District Administration Office; hence, condition has appeared for the son to be deprived of very basic human rights such as education, employment, property acquisition, identity and nationality; I have arrived to submit this writ petition to the esteemed Court for the sake of their protection.

My mother, Jayanti Shikari (Khanal) is working for my, Gopal Khanal, of the Petitioners, nurture, education and health treatment as well. Father left when I was small; hence, mother has worked hard for giving birth, raising, and including educating me. My father is not together with us. Hence, I want to obtain and make my identity by mentioning my father's name in citizenship and identifying by mother.

The basic structure of the laws relating to citizenship is the Part 2 of the Interim Constitution of Nepal, 2063. In Article 8 (2) (B) under the aforementioned Part of the Constitution, there is the provision that "If father or mother of a person was a citizen of Nepal at the time of his/her birth, such person shall be a citizen of Nepal by descent." Similarly, there is the provision congruent to Constitution in the Sub-clause (1) of Clause 3 of the Nepal Citizenship Act, 2063. We, the writ petitioners, are the complete Nepalese citizens. Both the parents of mine, Gopal Khanal's, of the petitioners, are Nepalese citizens. Constitution and law have made

clear provision that if any one of father or mother of a person is a citizen of Nepal, such person shall be a citizen of Nepal; but, I, the petitioner, have been deprived of obtaining citizenship simply because the father of mine, Gopal Khanal, has been disappeared; hence, severe injustice has occurred. Due to the carelessness of the opponents, situation has emerged to disappear my identity.

In Rule 3 (1) of Citizenship Rule, 2063, the Nepalese citizen who is over 16 and who wants to obtain Nepalese citizenship certificate, can furnish application before the District Administration concerned by attaching with it the Nepalese citizenship certificate of his/her father or mother or the relative within three generations, and recommendation exposing birthplace and relationship made by the local body concerned or replica copy of birth registration certificate, after the process of Schedule 1 is fulfilled; the oral order that citizenship would not be provided simply because the citizenship was to be obtained by identifying by the mother, upon holding patriarchal mindset, value and norm against the provision retained including in the Constitution and law severe injustice has occurred by inflicting damage upon the constitutional, legal rights of ours, mother and son, the petitioners, conferred by international treaties. The condition has emerged to disappear the identity of mine, Gopal Khanal, due to the aforementioned order, and I have to be deprived of the rights to be obtained from the state by a citizen upon being compelled to live in stateless condition.

Right to citizenship has been offered to every person by Article 15 of Universal Declaration of Human Rights (UDHR), 1948. There is the provision that nobody shall be deprived of his/her right of citizenship gratuitously. As per Article 24 of International Covenant on Civic and Political Rights (ICCPR), 1966, every child shall be registered immediately after birth and shall have a name; every child has the right to acquire a nationality. Article 9 (2) of Convention on Elimination of all Kinds of Discrimination Against Women (CEDAW) has made the provision that state parties shall grant women equal right with respect to the nationality of their children; and according to this, provisions have been made in our Constitution and law as well; but injustice has occurred by defining the right to provided citizenship as descent in fabricated manner, by depriving of the right of a person to obtain citizenship or the right to obtain identity. There is the provision in Article 7 of Convention on the Rights of Children that the child should be registered immediately after birth, and shall have the right, from birth, to a name, the right to acquire a nationality and as far as possible, the right to know and cared for by his/her parents. The provisions of the aforementioned treaties and conventions,

both the man and woman have guaranteed the right to provide citizenship. Thus, international treaties, agreements and our Constitution and law have offered the right to the mother to provide citizenship; however, the opponents have done injustice to me, the petitioner mother, by trying to make my child, who wants to obtain identity from my name, stateless.

It has breached the Article 9 (2) (B), Article 10, Article 12 (1), Sub-articles (1) (2) (3) of Article 13, Sub-articles (1) (3) of Article 20 of the Interim Constitution of Nepal, 2063, Articles 1, 9, 9 (2) Sub-articles (1) and (4) of Article 15 of Convention on Elimination of all kinds of Discrimination Against Women, Article 16, Sub-article (4) of Article 24, Article 26 of International Covenant on Civic and Political Rights, 1966, Article 15 of Universal Declaration on Human Rights, 1948, Article 1 of Convention on Reducing Statelessness 1961 and Clause 3 (1) of Nepal Citizenship Act, 2063 etc.

I, Jayanti Shikari (Khanal), of the petitioners, have been providing patronage upon being single mother of the Gopal Khanal, petitioner son; and as per clear provisions to give identity by providing citizenship to my children by identifying by me, the petitioner mother, pursuant to Article 8 (2) (B) of the Interim Constitution of Nepal, 2063, Clause 3 (1) of Nepal Citizenship Act, 2063, Rule 3 (1) of Citizenship Rule, 1.2 of (2) of Chapter 2 of Citizenship Certificate Distribution Procedure Directives, order, command including mandamus, whichever is needed, should be issued to provide citizenship certificate by descent by identifying my son by me, the petitioner mother. Moreover, my right to obtain and make identity by mentioning father's name and by identifying by mother as per constitutional and legal provisions by has been ensured to me, Gopal Khanal, of the petitioners; hence, order, command including mandamus, whichever is needed, should be issued to provide citizenship by identifying by mother.

There are hundreds of thousands of Nepalese across Nepal, like me, who have been the victimized upon being without citizenship. By issuing mandamus to make interpretation in connection to them as well, order should be issued on the names of all the District Administration Offices through the Ministry of Home Affairs and on the names of all the V.D.C. Offices, Offices of Metropolitan Cities, Sub Metropolitan Cities, Municipalities and their Ward Offices across the country through the Ministry of Federal Affairs and Local Development to make circulation for the sake of implementation of the aforementioned order. Petition claim reads as above.

What has happened on this? Why is not the order supposed to be issued as per the writ petition claim? Submit as per rule after the affidavits furnished or

time limit expired by sending summon notice on the names of the opponents stating to submit affidavits within 15 days excluding journey time of the road from the date of this order received, along with the ground and reason if the order is not supposed to be issued. Moreover, upon looking into the content of the petition, it is seen appropriate to quickly finalize the writ; hence, give first priority as per Rule 63 (3) of Supreme Court Rule, 2049. Order of this Court, of the date of 2072/3/21 (July 6, 2015 A.D.), reads as above.

Regarding the issue of providing citizenship of Nepal by mother's name, upon the writ petition of Writ No. 0703 of the year 2067 B.S. having including Sabina Damai versus including this Office, directive order was issued by the Supreme Court on date 2067/11/15 (February 27, 2011 A.D.) on the name of the Ministry of Home Affairs to arrange necessary provisions by issuing circulation on the names of all the C.D.Os. nationwide to provide citizenship of Nepal to the petitioner by mother's name as per law easily provide citizenship certificate by mother's name by fulfilling the rule and procedure of Nepal Citizenship Act, 2063 and Rule of the same when the children born in Nepal from Nepalese citizen mother; and for the sake of implementation of this, it was sent by writing to the Ministry of Home Affairs, and a letter for information that 3 points circulation was made to all the District Administration Offices through the letter of D.No. 147 of the date of 2068/5/5 (August 22, 2011 A.D) of the Ministry of Home Affairs, has also been received; hence, there is no condition to issued order from the esteemed Court; hence, writ petition should be revoked. Affidavit of the Government of Nepal, Office of the Prime Minister and the Council of Ministers reads as above.

Writ petitioner is found to have been unable to mention any where in his/her petition regarding what, what kinds of acts, actions or decisions of this Ministry have breached what, what kinds of the constitutional and legal rights; hence, there is no ground and reason to make this Ministry as opponent; the writ petition should be revoked. Affidavit of the Government of Nepal, Ministry of Federal Affairs and Local Development reads as above.

The issue regarding providing citizenship does not fall within the scope of this Ministry; hence, the writ petition filed by making this Ministry, an unrelated body, an opponent is seen to have been meaningless, hence, should be revoked. Affidavit of the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs reads as above.

The issue relating to citizenship is not the issue of the jurisdiction of this Ministry, but of the jurisdiction of the Government of Nepal, Ministry of Home Affairs; hence, the writ petition should be

revoked by the aforementioned ground and reason. Affidavit of the Government of Nepal, Ministry of Women, Children and Social Welfare reads as above.

If the opponents had registered any application for the sake of recommendation by being present in this Office, they would have submitted those documents evidence. If anyone furnishes application to this Office along with necessary documents, recommendation is being provided by not fulfilling process; the opponents have not be furnished any application yet nor is it seen to have been registered; hence, the writ petition, which the opponent have filed with an intention to just exert unnecessary trouble and harassment should be revoked. Affidavit of Kathmandu Metropolitan City, Office of Ward No.4 reads as above.

Instead of furnishing application as per rule to this Office by the party who asks for citizenship certificate of Nepal, being abided by the rule, process and procedure determined in the Citizenship Act and Rule, he/she has not submitted citizenship of father or husband to expose descent; upon trying to cross-match of the record of his/her father or husband in this Office, the record of 3640 of the date of 2025 B.S. (1968/69 A.D.) of his citizenship certificate has been tattered and torn off; hence there was no record; hence, upon providing information that citizenship certificate has to be made with new process in the condition of such record undiscovered, he/she was sent back by asking to furnish application for the sake of new process by providing information of rule, process and procedure of the Citizenship Act; hence, the writ petition filed by making this Office an opponent by mentioning false description should be revoked. Affidavit of District Administration Office reads as above.

If the writ petitioners furnish application from the place, where there is his/her father's permanent residence, before the Chief District Officer concerned by obtaining recommendation of the local body concerned, its actions shall happen from the District Administration Office concerned. Writ petitioners themselves have the responsibility to fulfill the documents to be submitted to obtain citizenship certificate by the Citizenship Act and Rule; hence, if he/she goes to the District Administration Office along with the documents concerned as determined by the Act and Rule by fulfilling the procedure prescribed, all the acts and actions shall happen from there; hence, writ petition furnished by making this Ministry an opponent is revocable; hence, should be revoked. Affidavit of the Government of Nepal, Ministry of Home Affairs reads as above.

Action can be furthered out of the address of father or mother in the condition that it is factually unclear where the address of the opponent is; but the

established fact upon the issue of dispute claimed by the opponents that action can be furthered on out of the address of father or mother, he cannot specified that this the address of this Office out of the addresses of his or his parents, hence, jurisdiction cannot be accepted by breaching the law. The petition filed by mentioning different facts of the condition that cannot attract the precedents mentioned in the context of the petition, should be revoked in connection to this Office. Affidavit of Hetauda Sub-metropolitan City, Office of Ward No. 1 reads as above.

In the present case that has been submitted upon being inducted to the daily cause list as per rule, document file and documents along with the application have been studied.

Pleading has been heard which was made by learned advocate Mr. Pabitra Raut, present on behalf of the petitioners, stating that Gopal Khanal, of the petitioners, had clearly claimed that father being Badri Prasad Khanal and mother being Jayanti Shikari (Khanal), they were Nepalese citizens, and that mother had got citizenship certificate and father's citizenship No. was 3640. The condition was that petitioner wanted to obtain citizenship by keeping identification of the mother, Jayanti Shikari (Khanal), mentioning father's name, surname; and father's name had been mentioned as Badri Prasad Khanal in his character certificate of passing out grade 8 of Gopal Khanal as well; hence, relationship was exposed and relationship was justified. Among the documents as per Rule 3 (1) of Nepal Citizenship Rule, 2063, though the Ward Office had not accepted the recommendation of local body or birth registration and relationship verification letter to expose relationship with relative, instead of providing citizenship certificate upon the application submitted, asking that Nepalese citizenship certificate should be granted as per the format of Schedule 1 of Nepal Citizenship Rule, 2063 by conducting spot investigation as per Rule 3 (2) of the same Rule, from the opponent's act of depriving of citizenship without speaking regarding providing or not providing citizenship, the petitioners were deprived of the guarantee of the rights to obtain certificate and provide citizenship to her child by her name; hence, order including mandamus should be issued in the names of the opponents as per petition claim.

Pleading has been heard which was made by learned joint attorney, Mr. Snajiv Raj Regmi, stating that instead of furnishing application to obtain Nepalese citizenship certificate, by submitting the recommendation or birth registration certificate and relationship verification letter to expose relationship with the relative, done by local body as per Rule 3 (1) (B) (C) of Nepal Citizenship Rule, 2063 in the format as per Schedule 1 of the same

Rule, the condition was that the petitioner did not claim to obtain citizenship by including those kinds of documents; hence, petitioner's petition should be revoked.

Now, It seems that decision is to be made whether order is supposed to be issued or not as per the petition claim.

Application is seen to have been furnished stating that after the son, Gopal Khanal, was born on date 2051/8/1 (November 17, 1994 A.D.) from the conjugal relationship after Jayanti Shikari, of the petitioners, got married to Badri Prasad Khanal, having house at K.M.C., Ward No. 4, as the second wife, that Badri Prasad Khanal became away from contact towards 2054 B.S. (1997/98 A.D.), mother accomplished the minor's education, nurture, and even after the son's age was complete, the father did not come into contact; hence, went to District Administration Office along with the replica copy of C.C. of father along with recommendation of Ward for the sake of making citizenship, obtain information that father should come otherwise citizenship would not obtained; while starting process to obtain citizenship by mother's name, were told that citizenship could not be issued by mother's name by retaining father's surname, Khanal; Khanal surname was mentioned in the certificates of the school of the son, and as the replica copy of the citizenship certificate of the father was required, while searching out, was successful to find an identity card having father's citizenship No. 3640 mentioned; after that, while demanding replica copy of the citizenship certificate from District Administration Office, Kathmandu, mentioning citizenship No. of the father, it was informed that it could not be provided due to the reason that C. record of No. 3640 of the date of 025 B.S. (1968/69 A.D.) was tattered and torn off; and, stating that without the father's citizenship certificate, recommendation was not made by the Ward Office; hence, he, the petitioner, Gopal Khanal, was deprived of the citizenship certificate simply because the father, Badri Prasad Khanal, had been disappeared; hence, mandamus order should be issued to provide citizenship certificate by identifying by mother as per Clause 3 (1) of Citizenship Act, 2063, Rule 3 (1) of Citizenship Rule, 1.2 of (2) of Chapter 2 of Citizenship Certificate Distribution Procedure Directives. Mainly, it appears that both the parents have been Nepalese citizens as per Clause 3 (1) of Nepal Citizenship Act, 2063; hence, Gopal Khanal, of the petitioners, tried to obtain citizenship by descent by mentioning father's name, surname in the citizenship, he could not obtain citizenship. It is seen from the affidavit of the District Administration Office, that citizenship of father or husband exposing descent was not submitted, upon trying to tally the record, such

record was not recovered as the record was not found as the record of his citizenship certificate 3640 of the date of 2025 B.S. (1968/69 A.D.) was tattered and torn off; hence, they were sent off by providing information of the rule, process and procedure of the Citizenship Act, advising to submit application for the sake of new process by providing information of the condition that citizenship certificate had to be made by new process; however, it is not seen that decision has been made by exposing any ground, reason of not being able to provide citizenship upon the application submitted by the petitioner, asking that citizenship certificate of Nepal should be granted, or giving order together with the reason if other procedure is supposed to be adopted regarding the citizenship.

In Sub-rule (1) of the Procedure of Obtaining Nepalese Citizenship Certificate by Descent, of Rule 3 of Nepal Citizenship Rule, 2063 "Nepalese citizens over sixteen years of age shall have to furnish application as per the format of Schedule 1, by attaching following documents, before the Chief District Officer concerned if he/she wishes to obtain Nepalese citizenship certificate by descent:

- a) Nepalese citizenship certificate of father or mother or the relative within three generations towards his/her lineage.
- b) Recommendation or birth registration certificate to expose birthplace and relationship done by the local body concerned
- c) If citizenship certificate of relative within three generations as per Section (A), relationship verification letter to expose relationship with the aforementioned relative."

In Sub-clause (1) of Rule 3 of Nepal Citizenship Rule, 2063 as per aforementioned, there is the provision of the procedure of obtaining Nepalese citizenship certificate by descent; and it is seen up to the fact that even mother's citizenship certificate and father's citizenship No. to identify by her has been submitted; however, it is seen from petition claim that recommendation or birth registration certificate provided by the local body concerned to expose birthplace and relationship as per Sub-rule (1) (B) of Rule 3 of Citizenship Rule, 2063 could not be submitted. Similarly, in Rule 3 (2) of the same Nepal Citizenship Rule, 2063 "Nepalese citizenship certificate can be provided to a Nepalese citizen who cannot submit the evidence as per Sub-rule (1) along with the application, on the ground of the documents as follows:

- a) Spot investigation made by local residents who have obtained Nepalese citizenship certificate in the format as per Schedule-3 in the presence of the representative of local body so as to expose that the applicant's father or mother was Nepalese citizens, hence, he/she is a

citizen of Nepal by descent and is continuously residing within the border of Nepal upon being born in Nepal

- b) Identification made at the spot of spot investigation in the format of Schedule-4 by three Nepalese citizens who have obtained Nepalese citizenship certificate, who are residing in the Ward concerned.

After the petitioner could not submit the recommendation or birth registration done by the local body concerned to expose birthplace and relationship, it is not seen that the opponent, District Administration Office, Kathmandu has furthered any process towards spot investigation of the procedure ensured by Rule 3 (2) of Nepal Citizenship Rule, 2063. From the replica copy submitted along with the present petition, it is seen that for the sake of obtaining Nepal citizenship of the son, Gopal Khanal, the petitioner mother, Jayanti Shikari, has furnished application to Chief District Officer, District Administration Office, Kathmandu in the format as per Schedule-1 of Citizenship Rule, 2063 by mentioning father's name, surname and father's citizenship certificate; and, the statement of the opponent, District Administration Office, also does not seem that the petitioner has not furnished application as per the aforementioned Schedule-1. Moreover, application was furnished in order get the record of the C.C.No.3640/025, Kathmandu of the father of the petitioner, Gopal Khanal, copied; but, upon the application that record of C.C.No. should be copied, it is seen that the District Administration Office, Kathmandu has informed the C. that the record of the petitioner, Gopal Khanal, of No. 3640 of the date of 025 B.S. (1968/69 A.D.) has been tattered and torn off; hence, it cannot be provided to the petitioner. However, upon the application furnished as per Schedule-1, no order or decision is seen to have been made; hence, it is essential to give order or decide, regarding whether the citizenship is to be provided or not or by examining as per law if it is to be additionally examined, for the sake of its surety. If there is ground to obtain citizenship by fulfilling the procedure to obtain citizenship certificate as per Rule 3 (1) and Rule 3 (2) of Nepal Citizenship Rule, 2063, citizenship is to be issued to the applicant, who asks for Nepalese citizenship, and if Citizenship certificate cannot be issued, decision is to be made as per that; but, on the ground that record has not been recovered because the record of the father's citizenship has been tattered and torn off or though it has been mentioned in the affidavit that information of the condition of making citizenship by new process of unclear description, it is seen that without giving order or making decision regarding the claim of the petitioner, the information of oral description or the act of returning the petitioner on behalf of the opponent District Administration

Office seems to create the procedure complicated and confusing.

In both the character certificate of passing out grade 8 and the mark sheet of the same grade submitted by the petitioner, father's name of this petitioner has been mentioned as Badri Prasad Khanal and Bishal Nagar-4, Kathmandu has been mentioned in the address, and from the identity card provided by Samaj Kalyan Kendra Briddhashram also, it is seen to have mentioned the citizenship No. 3640/025 Kath. of Badri Prasad Khanal. The citizenship of C.C.No. 9194 of Jayanti Shikari, mother of the petitioner, Gopal Khanal, issued by District Administration Office, Makwanpur on date 2044/9/20 (January 4, 1988 A.D.) has been seen; but no dispute is seen that the petitioner's mother is a Nepalese citizen. Precedent is seen to have been maintained by this Court as "No citizen can be deprived of obtaining citizenship certificate by not understanding the Constitution, law and covenant on human rights or making wrong logic and meaning by the official prescribed. The matter that hardship has to be faced to obtain citizenship certificate cannot be acceptable. If any one of father or mother of's person is a citizen of Nepal, such person can obtain the citizenship of Nepal;" (Having petitioner including Sabina Damai versus including the Government of Nepal, Office of the Prime Minister and the Council of Ministers, case including mandamus D.No. 8557). Hence, it is seen that the petitioner can obtain the citizenship of Nepal if he wished to obtain citizenship certificate by mother's name. however, the petitioner, Gopal Khanal, is seen to have wished to obtain citizenship by mentioning father's name, surname; upon looking towards it, this petitioner, Gopal Khanal, is seen to have claimed by submitting even the identity card having C.C.No. 3640/025 of Badri Prasad Khanal, father of the petitioner, Gopal Khanal, offered by Samaj Kalyan Kendra Briddhashram; hence, unless it is justified otherwise, it is seen that this Badri Prasad Khanal is a citizen of Nepal, and the No. of tattered condition as per that is seen in the citizenship record of District Administration Office; hence, petitioner claim does not appear to have been otherwise in the present condition. Mother, Jayanti Shikari, is seen to have specifically claimed that Badri Prasad Khanal is the father of Gopal Khanal, the petitioner, and that being a Nepalese citizen, he has got C.C.No. 3640/025, and that she is ready to identify in the office upon that description. From the aforementioned analyzed ground, it is seen in prima facie, that this petitioner, Gopal Khanal, being a child of Nepalese citizens, has the right to obtain citizenship of Nepal to be provided by the state, unless justified otherwise.

Petitioner, Gopal Khanal, has wanted to obtain citizenship by descent by including father's name

as per the legal provision of Clause 3 (1) of Nepal Citizenship Act, 2063; hence, procedure is seen to have been prescribed as per mentioned above. Mentioning the reason that the petitioner's father, upon being not in contact for a long time, has been in disappeared condition, petitioner is found to have explained his description and compulsion stating that he could not present the citizenship issued on the father's name and the father, and that local body has not provided recommendation to expose birthplace and relationship due to that reason. For the Nepalese citizens who cannot submit evidence as per Rule 3 (1) of Nepal Citizenship Rule, 2063, or in the present case, after the petitioner has not been able to submit the recommendation or birth registration certificate to the local body as per Rule 3 (1) (B) of Nepal Citizenship Rule, 2063, it is seen that citizenship certificate can be provided by fulfilling the documents or procedure as per Following (A) and (B) of Sub-rule 2 of Rule 3 of Nepal Citizenship Rule, 2063; but, this procedure is not seen to have been adopted in this either. The act of not providing citizenship without showing appropriate reason cannot be deemed appropriate; hence, measures of simplification and facilitation shall have to be searched in the act of providing citizenship as per legal provision; the act of not providing citizenship without the decision along with the reason, delaying in making decision on whether the citizenship is to be provided or not cannot be an appropriate way for the implementation of law. Due to the condition that citizenship No. 9194/2044, Makwanpur, the mother of the petitioner, Gopal Khanal, has been ready to stay for identification stating that Badri Prasad Khanal, citizenship No. 3640/025 Kathmandu is the father of the petitioner; as father's name is seen to have been mentioned in character certificate and mark sheet of the petitioner, Gopal Khanal, as Badri Prasad Khanal, Bishal Nagar-4 Kathmandu, it is decided that mandamus order shall be issued on the name of the opponent, District Administration Office, Kathmandu, to provide citizenship certificate unless the description explained or claimed by the petitioner is not seen otherwise, by adopting the procedure including examining spot investigation as soon as possible as per Rule 3 (2) (A) and (B) of Nepal Citizenship Rule, 2063 as well. Moreover, in connection to the citizens of this nature, particularly, to those whose father, upon being a Nepalese citizen, has not come into contact or has been disappeared or to those who are in the condition of the fathers being reluctant to get their children provided with citizenship, and to those who wish to obtain citizenship mentioned father's name,

surname as well, if mother or close relative give consent to bear liability by staying for identification, it is seen necessary to pay proper attention towards what, what kinds of appropriate and proper measure can be there to ease and simplify regarding providing citizenship to any Nepalese citizens who want to obtain citizenship adopting necessary and appropriate procedure of including Rule 3 (2) of Citizenship Rule, 2063. Generally, in order to make the legal provisions to obtain citizenship by the citizens simplified, easy and comprehensible, by paying attention to the following matters, besides other things, this directive order has also been issued on the name of the opponent, the Ministry of Home Affairs to arrange necessary provisions to provide citizenship certificate easily by issuing circulation on the names of all the Chief District Officers nationwide.

1. By making full simplification and transparent in the use and complying with the procedure of obtaining Nepalese citizenship certificate as per Nepal Citizenship Rule, 2063, quickly and effectively, collect the official evidence on whether one is a Nepali or not, and finding out other measures of facilitation as per law, manage or get it managed as per this.
2. If citizenship cannot be provided, make or get the order or decision made along with its reason.
3. If it is to be additionally examined or imported from any Body or submitted any evidence by the petitioner regarding whether the citizenship is to be provided or not, examine, import or get it submitted, examined and imported.
4. Make legal ground and procedure and the evidence to be submitted to obtain citizenship comprehensible by mentioning at the bottom of the (Schedule-1) form to be submitted.

Provide the information of this order to the opponents through the Office of Attorney General. Submit the document file, striking off the record of the case file.

Justice
 I agree with the aforementioned opinion.
 Justice
 Bench officer: Harka Bahadur Chhetri
 Computer typist: Ramesh Acharya
 Done on Monday on the day 22nd of the month of *Chaitra* in the year 2072 B.S. (*Monday, April 4, 2016 A.D.*)



Supreme Court

Division Bench

Honorable Justice Govinda Kumar Upadhyay

Honorable Justice Jagadish Sharma Poudel

Order

2069-WO-0153

Subject: Mandamus

Diwakar Chhetri, son of Sushma Rai Chhetri and Rudal Chhetri, a resident of ward No 4 of Kitani VDC of Lalitpur district	1	
Prabhakar Chhetri son of Sushma Rai Chhetri and Rudal Chhetri , a resident of ward No 4 of Kitani VDC of Lalitpur district	1	Applicant
Meera Dhungana for self and on behalf of Women, Law and Development Forum situated at ward No. 11 of Kathmandu Metropolis of Kathmandu District	1	
Vs.		
Nepal Government, Office of Prime Minister and Council of Ministers, Singhadurbar Kathmandu	1	
Ministry of Local Development, Pulchok, Lalitpur	1	
Ministry of Home, Singhadurbar, Kathmandu	1	Opponent
District Administration Office, Lalitpur	1	
Office of Kitani VDC, Godawari, Lalitpur	1	

The brief facts and order of the present writ petition, which falls under the jurisdiction of this Court, which has been filed as per Article 107 (2) of the Interim Constitution of Nepal, 2063, are as follows:

The petitioner institution is continuously working for the sake of women rights and human rights. The petitioner has locus standi to file petition as per article 107 of the Interim Constitution of Nepal, 2063.

We, the petitioners, Diwakar Chhetri and Prabhakar Chhetri, are the victims who were refused to allow citizenship upon going to Village Development Committee to get recommendation for the sake of obtaining citizenship. From the conjugal relationship between the father Rudal Chhetri and mother Sushma Rai, I, Diwakar Chhetri, and I, Prabhakar Chhetri, were born at Patan Hospital on date 2031/5/22 (September 7, 1974 A.D.) and on date 2035/4/25 (August 9, 1978 A.D.) respectively. Since we were born, we have been continuously living at Kitani Village Development Committee 4,

Godawari under Lalitpur District. We are the sons of Nepalese parents. Our father Rudal Chhetri died on date 2036/8/26 (December 12, 1979 A.D.) when we were 5 and 1 years of age. After the death of father, mother held a second marriage with Yogendra Rai in 2042 B.S. (1985/86 A.D.) Hence, Yogendra Rai is still our patron. Our mother informed us that after the death of father, all the documents connected to him were burnt down as per our custom and tradition; hence, it has become impossible to obtain citizenship through father's name; hence, whenever we frequently went to Lalitpur District, Kitani Village Development Committee to obtain recommendation, our mother were talked with low leveled matter, so as to feel humiliated, like if she had determined to give the citizenship to the sons, why she had held second marriage, and that record has been submitted herewith. On date 2068/11/25 (March 8, 2012 A.D.), when we had gone to the aforementioned Village Development Committee to get recommendation upon filling up the form

of Schedule-1, we were told to go on following day, and the same process repeated on the following day, and even after going at least 10 times, without even endorsing of not giving the recommendation, the application was returned instead; hence, we, who were born, grown up and studied in Nepal, are compelled to live in the condition of statelessness upon being deprived of the right to identity in our own country.

Article 8 (2) (B) of the Interim Constitution of Nepal, and Sub-clause (1) of Clause 3 of the Nepal Citizenship Act, 2063 have covered up both father or mother within the definition of the descent. In Sub-rule (1) of Rule 3 of the Citizenship Rule, 2063, there is clear provision that the Nepalese citizen over 16 years of age, who wishes to obtain Nepalese citizenship certificate should furnish application in the format as per Schedule 1, before the Chief district Officer concerned along with the Nepalese citizenship certificates of his/her father or mother or his/her relatives within three generations, explaining birthplace and relationship, together with the recommendation made by the local body concerned.

Apart from our constitutional and legal provisions, treaties and agreements, of which Nepal also is a party country, have realized the right to citizenship as a human right. The provisions including Article 15 of Universal Declaration on Human Rights, 1948, Article 24 (2) of Covenant on Civic and Political Rights, 1966, Article 9 (2) of Convention on Elimination of all forms of Discrimination against Women, 1979, no person is shall be deprived of the right to citizenship and rendered in the condition of statelessness.

Despite having the right to get recommendation to obtain citizenship by mother's name and to obtain citizenship due to the constitutional, legal and the documents relating to international human rights, there is the condition of not being allowed to obtain the recommendation for the sake of citizenship and the citizenship due to the patriarchal mind set, norms and values and behaviors of the officials authorized to confer recommendation for the sake of citizenship and the citizenship; hence, as per the Interim Constitution of Nepal, 2063 and Nepal Citizenship Act, 2063, our mother was a Nepalese citizen at the time of our births; hence, despite having our right to obtain citizenship of descent, contrary to this, while going to get recommendation of the citizenship and the citizenship by mother's name, we were verbally refused to be given recommendation and the citizenship; hence, we have been deprived of our constitutional right, our right to get identity, right to get higher education, right to employment, right to business, right to residence, right of equality, right of nationality,

including right to make choice of obtaining citizenship through whose name out of father or mother's name; hence, order or command should be issued on the name of opponents to provide recommendation to get citizenship to us victims petitioners by mother's name and give and get the citizenship given too, and issue order or command including mandamus, whichever is needed, so as to interpret in connection to the other victims like us who remain across the country. Writ petition reads as above.

What has happened on this, stating to submit affidavit, attaching petition and the copy of this order along, sending the notice summon, submit after the affidavit arrives or after the time limit expires. Since no role of the opponent No. 1, 2 and 3 is seen to have been mentioned in the petition, it is not necessary to issue show cause order on the name of the aforementioned opponents. Upon seeing the nature and seriousness of the present writ petition, it is seen that it is supposed to be decided quickly; hence, first priority has been granted in the submission. Order of this Court of the date, of 2069/5/6 (August 22, 2012 A.D.), reads as above.

The writ petitioners have not submitted the application congruent to the rule to this office as per Schedule 1, which is to be submitted for the sake of obtaining citizenship certificate that has been made provision in Clause 8 of Nepal Citizenship Act, 2063 and Rule 3 of Nepal Citizenship Rule, 2063; hence, no process has been furthered on towards providing these writ petitioners with Nepalese citizenship certificate; Sushma Rai, among the writ petitioners, furnished straightforward application on date 2068/10/3 (Januray 17, 2012 A.D.), stating that her sons, Diwakar Chhetri and Prabhakar Chhetri should be provided with citizenship; when the secretary of Godawari Village Development Committee was informally asked regarding her claim, description was mentioned that recommendation was not made because it was not ensured in the context of whether, Rudal Chhetri, the father of writ petitioners was or was not a Nepalese citizen; if the father of the writ petitioners was a foreign citizen, the provision of Article 5 of Nepal Citizen Act, 2063 would be attracted; hence, when asked whether the writ petitioners wanted to obtain citizenship as per this or not, they wanted to obtain the citizenship by descent as per Clause 3 of the same Act, and said that they would not submit application for the sake of naturalized citizenship as per Clause 5; hence, no action has been furthered regarding this. Affidavit came to be furnished on behalf of District Administration Office, Lalitpur reads as above.

No substantial evidence could be submitted on whether, Rudal Chhetri, the father of the writ

petitioner, was or is a Nepalese citizen; hence, it was said that recommendation could not be made for the sake of Nepalese citizenship by descent. In the writ petition, though the opponent mentioned that all the documents connected to him were also burnt down after the death of their father as per their custom and tradition, the matter of burning down the documents in that way is unconvincing; if burnt down, in the record of which office were the aforementioned documents, without mentioning relating to whether or not the replica copies could have been obtained, the condition is that they entered without clean intention. The secretary of village development committee has not behaved so as to humiliate the opponents; instead, the persons including the opponent, who were brought by her, had threatened the secretary and staff of village development committee, vilifying. The writ petition, which has been filed to trouble the secretary of village development committee, putting on false accusation, should be revoked. Affidavit furnished on behalf of the previously Kitani and present Godawari Village Development Committee, reads as above.

In this, attaching the documents together with the decisions on certiorari mandamus writ petition having such content involved, having the petitioner including Bhola Nagarkoti and opponent including District Administration Office, Kathmandu, decided on date 2070/12/10 (March 24, 2014 A.D.), and in certiorari mandamus writ petition, having the petitioner Bijay Basnet and the opponent District Administration Office, Lalitpur, decided on date 2071/12/30 (April 13, 2015 A.D.), submit the as per rule. Order of this Court, of the date of 2072/1/9 (April 22, 2015 A.D.), reads as above.

Document file of the present case that was submitted upon being inducted in the weekly and daily cause lists of the case as per rule was studied. Learned advocated duo Ms. Mira Dhungana and Ms. Sushma Gautam present on behalf of the petitioners presented the pleading stating that Sushma Rai, the petitioners' mother, is a citizen of Nepal by descent; the petitioners have the right to obtain citizenship of Nepal on the ground of the Interim Constitution of Nepal, 2063, Nepal Citizenship Act, 2063 and various international covenants in which Nepal is a party country; hence, the writ should be issued. Learned deputy attorney Mr. Bal Krishna Wagle present on behalf of the opponent including the District Administration Office, Lalitpur presented the pleading stating that the petitioners have not been reached up to the authoritative body for the sake of citizenship certificate; hence, it is not right to say that citizenship was refused to confer. After investigating, authoritative body decides whether one can or cannot obtain citizenship;

hence, writ should be revoked. On the ground of documents evidence attached to the document file, including the pleadings made by the learned legal professionals, it seems that, in the writ petition, decision is supposed to be made regarding whether or not the order is supposed to be issued as per claim.

Upon considering towards the decision, main writ petition claim is found to have been that after the death of father, his all documents were burnt down as per their custom and tradition; hence, when tried to get recommendation from village development committee, they were refused; district administration office also refused to confer; but, their constitutional and legal right to obtain citizenship by mother's name has been ensured by the Interim Constitution of Nepal, 2063 and Nepal Citizenship Act and Rule; hence, mandamus order should be issued to confer recommendation to obtain citizenship by mother's name and to confer the citizenship as well. Description of affidavit of the opponent, village development committee, appears to state that no substantial evidence was submitted stating that the petitioners' father was or is a Nepalese citizen; hence, recommendation was not given for the sake of the Nepalese citizenship certificate, and of the opponent District Administration Office that application was not submitted congruent to rule stating to obtain citizenship.

In this, writ petitioners Diwakar Chhtri and Prabhakar Chhetri seem to have been the sons of father Rudal Chhetri and mother Sushma Chhetri. Upon minutely looking into the documents evidence furnished by them along with the petition, it appears that writ petitioners' father Rudal Chhetri died on date 2036/8/26 (December 12, 1979 A.D.) and after that his wife writ petitioners' mother Sushma Rai married Yogendra Rai on date 2042/5/23 (September 8, 1985 A.D.). Upon looking into the replica copy obtained on date 2033/4/3 (July 18, 1976 A.D.) by this Sushma Rai, she is found to have obtained from District Administration Office, Lalitpur by descent. Citizenship is an important certificate issued by the state for the sake of identity of its citizens. Citizenship is a matter connected to the nationality of a person; hence, the state prepares the grounds for obtaining citizenship by formulating constitution and law. A person does not automatically become a citizen of the country where he/she resides or is involved in employment, occupation, business. Being under the policy of the state, law prepares the particular grounds and processes to obtain citizenship. The citizenship certificate is issued to the persons who fulfill such grounds and processes. According to Article 8 (2) (B) of the then prevailing Interim Constitution of Nepal, 2063, it is found that there is the provision

that at the time of the birth of a person, if his/her father or mother is a Nepalese citizen, such person shall be qualified to obtain citizenship. In Article 11 (2) (B) of the present Constitution of Nepal also, the provision as per the same is found to have been retained. In Sub-article (5) of the same Article, by making provision that “The person, who was born and is residing in Nepal from a Nepali citizen mother and whose father cannot be identified, shall be conferred with the citizenship of Nepal by descent;” in the proviso clause, the provision is found to have been retained stating that “provided that, if father is decided to have been a foreign citizen, the citizenship of such person’s citizenship shall be changed into naturalized citizen as per the federal law.” Though the present writ petition was filed under the then prevailing Constitution of Nepal, 2063, after repealing the aforementioned Constitution, in the context of the promulgation of the present Constitution of Nepal, there is no doubt that now the issue of acquisition of the citizenship also shall be as per this Constitution. In Clause 3 of Nepal Citizenship Act, 2063, it is found that although a person, whose father or mother was a citizen of Nepal at the time of his/her birth, shall become a citizen of Nepal by descent, in Clause 5 (2), in connection to the child born to a Nepali Citizen woman who is married to a foreign citizen, if he/she is residing permanently in Nepal upon being born in Nepal and if he/she has not obtained the citizenship of foreign country on the ground of the father’s citizenship, he can be conferred with naturalized citizenship as per prescribed.

Even if the petitioners have claimed that their father was a Nepalese citizen, there is the condition that the writ petitioners have admitted themselves that they were unable to submit evidence of their father being a Nepalese citizen. If law has made available more than one option to use any constitutional and legal right, the right to choose any option out of

these is vested in the person who is allowed to use such right. In the context of the present writ petition, although there is no doubt that the writ petitioners are allowed to use the constitutional and legal right to obtain citizenship by mother’s name, the liability lies on the petitioners themselves to fulfill the aforementioned constitutional and legal standards and processes needed to use the aforementioned right. If the writ petitioners go to the authorized body to obtain citizenship by fulfilling the process, such body shall have to come to a conclusion upon conducting necessary investigation regarding obtaining or not obtaining the citizenship as per claim.

Hence, it is seen that decision is supposed to be made after conducting investigation regarding whether the petitioners are the person who obtain citizenship as per Clause 3 (1) of the Nepal Citizenship Act, 2063 or are the persons who can obtain citizenship as per Clause 3 (2) and Clause 5 (2) of the same Act or not; hence, it is decided that mandamus order shall be issued on the names of the opponents District Administration Office, Lalitpur and previous Kitani presently Godawari Village Development Committee, Lalitpur to decide by conducting necessary investigation and provide its information to the petitioners as well. Provide the information of the order to the Office of the Attorney General and the opponents. Striking off the record of the case file, submit the document file by doing as per rule.

Justice

I am with the said opinion.

Justice

Bench Officer: Aatmadev Joshi

Computer Setting: Chandra Timalsena

2073/01/30/05 (Thursday, 12th May, 2016)

Bhadra 13, 2073 (29th August, 2016)

**Supreme Court,
 Division Bench**

Honorable Justice Dr. Ananda Mohan Bhattarai

Honorable Justice Prakash Man Singh Raut

Order

072-WO-0520

Subject: Mandamus et al

Kriti Thapa, a resident of Ward No 5 of Kathmandu Metropolis of Kathmandu district1
 Kabita Thapa, a resident of Ward No 5 of Kathmandu Metropolis of Kathmandu district1 Petitioner
 Vs.
 Nepal Government, Office of Prime Minister and Council of Ministers, Singhadurbar,
 Kathmandu1
 Nepal Government Ministry of Home, Singhadurbar, Kathmandu1
 Nepal Government District Administration Office, Babarmahal Kathmandu1
 Office of ward No 5 of Kathmandu Metropolis of Kathmandu district1 Opponent

Brief fact and order of the present writ petition that has been submitted by being fallen under the jurisdiction of this Court as per Article 107 (2) of the Interim Constitution of Nepal, 2063 are as follows:

1. Of the petitioners, I, Kriti Thapa, and Kabita Thapa, are the victims who have been deprived of the right to obtain the citizenship and to provide the citizenship through her name. Of the petitioners, having love marriage of the mother, Kabita Thapa, with Bishwa Nath Thapa, a resident of Rautahat, in the month of Jestha of the year 2052 B.S. (May/June, 1995/96 A.D.), daughter, Kriti, was born on date 2052/11/26 (March 9, 1996 A.D.) from that marital relationship. Since the month of Paush of the year 2058 B.S. (December/January 2001/02 A.D.), when he went to the work in garment, the father, Bishwa Nath Thapa, has not returned. I, the mother Kabita Thapa, have been taking up the responsibility to nurture, educate the petitioner. Since she had got married at a young age, she did not have citizenship nor was her marriage registered. Upon deciding to obtain citizenship, mother obtained citizenship in 2061 B.S. (2004/05 A.D.) through her father's name from Kathmandu District Administration Office. Of the petitioners, after the daughter,

Kriti Thapa, became over 16 years of age, citizenship was needed for the sake of getting higher education; hence, when we went to the Ward Office of Ward No 5 of K. D., K.M.C. on date 2071/11/12 (February 24, 2015 A.D.) for the sake of recommendation to get citizenship, we were denied to be provided with the recommendation, stating that citizenship could be obtained from the name and address of the father only; then, upon going to the District Administration Office, when we informed of our problems and the reply given to it by the Ward Office, the District Administration Office also returned us on date 2072/6/7 (September 24, 2015 A.D.), saying that law of providing citizenship from the mother's name and address had not been made.

Due to the situation that Kriti Thapa, of the petitioners, has not been able to obtain citizenship certificate through the mother, Kabita Thapa, of the petitioners, she is compelled to live in stateless condition and has been deprived of many rights to be obtained from the state due to not obtaining citizenship; it has been against the provision that mother can give identity by providing citizenship to her children through her name as per Article

- 11 (2) (B) and Article 12 of the Constitution of Nepal, Clause 3 (1) of the Citizenship Act, 2063, Rule 3 (1) of Citizenship Rule, 2063, and has been against Article 15 of International Human Rights, Article 24 of International Covenant on Civic and Political Right, 1966, Article 7 of Convention on the Rights of the Children, including Article 9 of Convention on Elimination of all forms of Discrimination Against Women, 1979; hence, order an command including mandamus, whichever is needed, should be issued to provide citizenship by mother's name as per law and to provide citizenship by descent by mother's name so as to be interpreted in connection to the victims like us across the country. Joint writ petition of the writ petitioners, Kriti Thapa and Kabita Thapa, of the date of 2072/10/7 (January 21, 2016 A.D.) reads as above.
2. Order of this Court issued on date 2072/10/17 (January 31, 2016 A.D.), stating to submit affidavit within 15 days as well as grant prerogative.
 3. From her writ petition, it is clearly seen that application was not submitted by fulfilling the process as per Nepal Citizenship Act, 2063 and Citizenship Rule, 2063 along with the recommendation of the Ward Office concerned for the acquisition of the citizenship; hence, citizenship certificate shall be provided for the Nepalese citizen who submits application to this Office to obtain citizenship certificate by fulfilling legal process; hence, the petitioner has not furnished application to this Office; in this condition, the writ petition furnished by making this Office an opponent should be revoked. Affidavit of Chief District Officer of Kathmandu, Ram Krishna Subedi, of the date of 2072/11/3 (February 15, 2016 A.D.) reads as above.
 4. By going to the place of permanent residence, in the condition of the name, surname and address of the father known, due to what, by what reason it was difficult for the petitioner to go to the District Administration Office carrying along the recommendation of the local body concerned; the petitioner has not explained anything towards this. In Citizenship Act and Rule, the liability to fulfill the documents to be submitted to obtain citizenship lies to the writ petitioner; hence, by fulfilling procedure prescribed, while going to District Administration Office along with the documents determined by the act and law to be submitted, all the acts and actions shall be done from there; hence, the writ petition furnished by the petitioner by making this Ministry an opponent should be revoked. Affidavit of the Secretary of the Ministry of Home Affairs, Narayan Gopal Malego, of the date of 2072/11/16 (February 28, 2016 A.D.) reads as above.
 5. The opponent had never said, by coming to the Office of K.M.C., Ward No. 5, that recommendation for the citizenship was to be made, and child's birth registration is needed for the sake of obtaining citizenship; without submitting that, the writ petition furnished by mentioning unnecessary law should be revoked. Affidavit of Administrative Chief Om Prakash Paudel of the Office of K.M.C., Ward No. 5, of the date of 2072/11/19 (Marh 2, 2016 A.D.), reads as above.
 6. No affidavit from the opponent, the Office of the Prime Minister and the Council of Ministers, has been received.
 7. In the present case that has been submitted today before the Bench by being inducted to the daily cause list as per rule, documents evidence attached to the document file have been studied. Learned advocates Ms. Meera Dhungana and Mr. Sushma Gautam, present on behalf the petitioners pleaded stating that there was no dispute that the petitioner, Kriti Thapa, was a daughter of a Nepalese Citizen, Kabita Thapa. Since father disappeared, Kriti Thapa furnished application to the opponents, K.M.C., Ward No. 5 and District Administration Office to get citizenship by mother's name by fulfilling the process of the Constitution of Nepal, Clause 3 (1) of Nepal Citizenship Act, 2063, Rule 3 (3) of Nepal Citizenship Rule, 2063, but the opponents, Chief Administrator of the K.M.C., Ward No. 5 and Chief District Officer refused, refused to be provided with citizenship by mother's name, stating that citizenship had to be received only from the name of the father's address and father's name; hence, this Kriti Thapa has been compelled to live without citizenship in stateless condition and has been deprived of the constitutional right to get citizenship including the legal right to be obtained as a citizen. The aforementioned act of the opponents is against the Constitution of Nepal, Nepal Citizenship Act and Rule, 2063 including international documents of which Nepal was a party. Hence, necessary order should be issued on the name of the opponents so as to be interpreted that the petitioner Kriti Thapa and the victims like her should be provided citizenship by mother's name.
 8. Learned joint attorney Mr. Dashrath Pangeni, present on behalf of the opponent including the Government of Nepal, pleaded stating

that the Government of Nepal has not made any discrimination to provide citizenship for the Nepalese citizens like the petitioner. For the sake of substantive right of obtaining citizenship claimed by the petitioner, some procedural processes also have to be fulfilled. Without fulfilling process as per law, it is not right to imply that to confer citizenship was refused due to the disappearance of the father. Hence, writ petition should be revoked.

9. Upon hearing the aforementioned pleading, while considering towards the decision, is the order as per petition claim supposed to be issued in the present case or not? It appears that decision is to be made on this issue.
10. Upon considering towards the decision, pleading is seen to have been held, stating that Kriti Thapa, of the petitioners, is the daughter of Bishwa Nath Thapa, a resident of Rautahat, and Kabita Thapa; that Kabita Thapa, the mother of Kriti Thapa, held love marriage with Bishwa Nath Thapa, a resident of Rautahat, at the age of 15; after the birth of Kriti Thapa from that marital relationship, saying that he would go to work in the garment, the father, Bishwa Nath Thapa, went away and then disappeared; he has not been in contact since that time; and presently she was adult; hence, upon requesting for the recommendation to obtain citizenship by mother's name, the opponent, Kathmandu district, K.M.C., Office of Ward No. 5 refused to be provided with recommendation.
11. Upon looking into the replica copies of the document evidence attached to the petition, affidavit of Chief District Officer, Kathmandu is found to have been attached, stating that Kabita Thapa, the mother of Kriti Thapa, of the petitioners, was born on 2037/3/30 (July 13, 1980 A.D.) in Kathmandu district, K.M.C., Ward No. 5 and on date 2062/8/7 (November 22, 2005 A.D.), citizenship certificate of C.C.No. 2023 was issued on her name from Kathmandu District Administration Office, and from the replica copy of the certificate of S.L.C., attached to the document file, it is seen that the petitioner, Kriti Thapa, was born on date 2052/11/26 (March 9, 1996 A.D.). It is also seen to have been mentioned in the writ petition that an application was submitted to the District Administration Office, Kathmandu on date 2072/6/7 (September 24, 2015 A.D.) to get citizenship by descent upon being identified by mother. The petitioner has not furnished application in this Office; and affidavit of Om Prakash Paudel, administrative chief of the K.M.C., Ward No. 5, of the date of 2072/11/19 (March 2, 2016 A.D.), stating that the petitioner

has never come to this Office of Ward No. 5 of K.M.C. to ask for the recommendation for the sake of citizenship, and child's birth registration was needed for the sake of getting citizenship; she has furnished application without submitting it as well.

12. Upon looking into our constitutional provision regarding citizenship, upon looking into our constitutional provision regarding citizenship, as per the provision made in Section (B) of Sub-article 2 of Article 11 of the Constitution of Nepal, provision is seen to have been made that a person whose "father or mother" was a citizen of Nepal at his or her birth shall be a citizen of Nepal by descent. In Sub-clause (1) of Clause 3 of Citizenship Act, 2063, provision is seen to have been made that if a person's "father or mother" is a citizen of Nepal at the time of his/her birth, such person shall be a citizen of Nepal by descent.
13. In the Constitution and the Act, the phrase "father and mother" has been used, from this, if any one of the father or mother is a Nepalese citizen, it is seen that their child can obtain Nepalese citizenship certificate as soon as they are 16 years of age. Person concerned can make a choice of either father's or mother's name through which he/she wants to obtain citizenship. There is the condition that this Court has accepted this matter. (N.L.M. 2066 D.No. 8175 P. 1014) In this condition, it is not right to ward off by telling her to submit the father's citizenship or go to inconvenient place to obtain citizenship.
14. From the S.L.C. certificate, it is seen that the petitioner was born in Nepal on date 2052/11/26 (March 9, 1996 A.D.), and the father had gone to work in garment while the petitioner was still an infant; then he did not return, but not come in contact being disappeared, and when application was submitted to obtain citizenship by descent by mother's name upon identifying by the mother, the opponent refused to be provided with recommendation and certificate of citizenship saying citizenship had to be obtained from the father's name and address and that the law of providing citizenship,, without father, by mother's name had not been made yet.
15. So far as to the connection to the issue that the petitioner's father has been disappeared, it is not right that daughter, Kriti Thapa, of the applicants, cannot obtain citizenship simply because the father has been disappeared, and that Kabita Thapa, of the petitioners, cannot provide her child, daughter, with citizenship through her name. Upon looking through the

- relativity of Article 11 (4) of the Constitution of Nepal, it is seen that in connection to the person who is found in Nepal, whose father and mother's address is not traced, there is the provision that he/she can obtain citizenship by descent; whereas, in Article 15 (5) of the Constitution of Nepal, the person who was born to a Nepalese citizen mother who has permanent domicile in Nepal and whose father cannot be identified, can obtain citizenship by descent. Here, there is not the condition that the petitioner's father or mother has not been traced or father has not been identified. The petitioners have clearly mentioned the name and address of their father or husband. Their statement is that after the father, Bishwa Nath Thapa went to work in the garment industry, he did not return, but has become disappeared and is without contact. From affidavits, it is not seen that this is wrong. The crux of the matter is that, when there is the provision in the Constitution and in Act to obtain citizenship through the name of any one between "father" or "mother", application can be furnished, attaching mother's citizenship if the father is disappeared. In such a situation, it is not right to refuse to provide citizenship certificate by posing hurdle that father's citizenship could not be submitted.
16. From the replica copy document of S.L.C. certificate, it is seen that the petitioner, Kriti Thapa, was born on date 2052/11/26 (March 9, 1996 A.D.). It is also seen that she is over 16 years of age. It seems that there is no dispute on the matter that the petitioner's mother, Kabita Thapa, was born on date 2037/3/30 (July 13, 1980 A.D.) in Kathmandu district, K.M.C., Ward No. 5 and citizenship certificate of C. C. No. 2023 was issued on her name from District Administration Office, Kathmandu on date 2061/8/7 (November 22, 2004 A.D.) ; hence, the petitioner is seen to be a person qualified to obtain citizenship certificate of Nepal if she fulfills the procedure prescribed in Nepal Citizenship Act, 2063 and Rule of the same.
 17. Citizenship certificate identifies a person as a citizen of a particular country. Without becoming a citizen, political right cannot be used. Citizenship certificate is very essential to use political and economic rights and to identify as a citizen. State confers various fundamental rights to its citizens, such as, using fundamental rights, getting employment, taking up public post, using political right, receiving social security and casting votes etc. Political right is not obtained by a person other than the citizen. Citizenship is a very sensitive issue linked to the identity of a person; hence, in the condition that it is substantially seen that she is a citizen, it is not just to pose tiny hurdles.
 18. In Article 18 of the Constitution of Nepal, provision has been made regarding the right to equality. The right of Article 18 is the right indiscriminately conferred to all the citizens. In Article 18 (1), it is guaranteed that all the citizens shall be equal in the view of law and that nobody shall be deprived of the equal protection of the law. The matter that nobody shall be discriminated on the ground of gender has been mentioned in Article 18 (2). In addition to this, provision has been made in Sub-article (1) of Article 38, stating that every woman shall have equal lineage right without discrimination. Successor of lineage and equal right of identity based on this also shall also fall within the lineage right. Here seems no base and reason that the petitioners shall not obtain the rights conferred by the Constitution of Nepal.
 19. The matter that Kabita Thapa, of the petitioners, is a citizen of Nepal is being justified by her citizenship certificate of Nepal; however, because of the citizenship certificate of Nepal not issued to her daughter, Kriti Thapa, by mother's name, it is seen that condition has stood here of affecting the fundamental rights of both of them. It is not seen that the opponent District Administration Office has not viewed towards the matter that such act of discrimination meted out to the women based on gender kidnaps the right to equality of the women.
 20. Mandamus order is seen to have been issued on the name of District Administration Office by this Court on the writ petition having including Sabina Damai versus the Government of Nepal (Writ No. 2067-WO-0703 N.L.M. 2068 D.No. 8557 Number 2 Page 247), to provide citizenship by mother's name. After that, it is seen from the affidavits submitted by the Office of the Prime Minister and the Council of Ministers upon the petition of (Writ No. 2070-WO-0817) having Laxmi Lama versus including the Government of Nepal submitted today, the aforementioned order went, in writing to the Ministry of Home Affairs, on date 2068/3/6 (June 20, 2011 A.D.), through the Secretariat of the Council of Ministers for the sake of the implementation, and from the Ministry of Home Affairs, circulation was made through the letters of the date of 2068/5/5 (August 22, 2011 A.D) to all the District Administration Offices and the bodies concerned for the sake of implementation of the aforementioned

order. Likewise, in the petition having including Bholu Nagarkoti versus the Government of Nepal (Writ No. 2069-WO-0880) also, it is seen to have been ordered by this Court to provide citizenship by mother's name. It has been mentioned above regarding the decision made on the writ petition of Ranjita Thapa. Thus, it is also seen that the matter that citizenship can be obtained through the name of Nepalese citizen mother has been established by this Court before this. Upon the demand of the petitioner that citizenship should be granted by mother's name, the matter of where the father has gone or what has happened is not seen relevant. Despite having the provision that citizenship can be obtained by mother's name, to deprive the petitioner of obtaining the citizenship or to tell her to go to inconvenient district is considered to be an act done against the law. The official bestowed with legal authority shall have to fulfill his/her legal duty. Not to do so appears to be against not just the equality but equity, too. It is necessary to look into this issue upon being sensitive by the opponent Office itself since the petitioner has said that application was furnished to the District Administration Office, Kathmandu.

21. Hence, from the aforementioned ground and reason, in the present petition, the matter that Kabita Thapa, the mother of Kriti Thapa, is a Nepalese citizen also has been justified, and the petitioner, Kriti Thapa, is seen to

have been born in Nepal from the Nepalese citizen, Kabita Thapa; hence, it is decided that mandamus order shall be issued on the name of the opponent, Kathmandu Metropolitan City, Ward No. 5, Ward Committee stating not to refuse to provide recommendation for the sake of citizenship if the petitioner submits mother's citizenship and if she submits evidence to ensure birth, and on the name of District Administration Office, Kathmandu not to refuse to provide citizenship by mother's name if the recommendation and the replica copy of the citizenship of the mother's name is submitted. As per the decision made by this Court on the aforementioned writ petition of Sabina Damai on the issue that citizenship can be obtained by mother's name, it is exposed that circulation has been made to all the District Administration Offices; hence, it appears that re-order is not supposed to be issued on all the District Administration Offices. Provide the information of the order to the opponents, and submit the document file to the record section, by striking off the record of the case file.

Justice

I agree with the said opinion.

Justice

Bench Officer: Manu Kumari G.M. B.K. (Under-Secretary)

2073/05/13/01 (Sunday, 29th August, 2016)



Supreme Court,
Division Bench

Honorable Judge Dr. Aananda Mohan Bhattarai

Honorable Judge Prakashman Singh Raut

Order

071-WO-1076

Subject: Mandamus et al

Prashant Biswas, a resident of ward No 6 of Dharan Municipality of Sunsari district1 Petitioner
Plaintiff

Vs.

District Administration Office, Sunsari1 Defendant
Respondent

Brief fact and order of the present writ petition that has been submitted by being fallen under the jurisdiction of this Court as per Article 107 (2) of the Interim Constitution of Nepal, 2063 are as follows:

1. I, petitioner, am the victim of being deprived of Nepalese citizenship. I am the son of Gopal Bishwas, a resident of Sunsari district, Dharan Municipality, Ward No. 6 and Sabitri Shrestha. After my father, Gopal Bishwas, disappeared, when I was 5 years old, without informing the mother; he has not been traced yet. My father has not obtained citizenship certificate at all, and this father does not have any brothers; hence, mother has been staying upon coming to maternal home at Kathmandu district, Kirtipur Municipality, Ward No. 1, and obtained citizenship certificate from District Administration Office, Kathmandu on date 2056/7/16 (November 2, 1999 A.D.). Petitioner's parents are Nepalese citizens. I, the petitioner, am now 21 years old, and presently require citizenship for the sake of achieving higher education; hence, by fulfilling all the documents and legal process including birth certificate, educational qualification, migration, voter's identity card of the mother, spot investigation deed and recommendation of local registrar, document was submitted to District Administration Office, Sunsari, by identifying by mother, for the sake of obtaining citizenship by descent on date 2071/12/13

(March 27, 2015 A.D.), it was returned on date 2072/3/25 (July 10, 2015 A.D.) without doing anything, orally stating that I could go wherever I had to and that citizenship could not be provided from there; hence, I have been compelled to be deprived of getting higher education, employment and government service and facilities; hence, mandamus order should be issued on the names of the opponents as per Article 8 (1), 8 (2) (B), Articles 12 (1), 13 (1) of the Interim Constitution of Nepal, 2063, Clause 3 of Nepal Citizenship Act, 2063 and including the writ petition decided on by the esteemed Supreme Court regarding (N.L.M. 2068 D.No. 8557 Number 2 P. 247). Writ petition of Prashant Bishwas, of the date of 2072/3/30 (July 15, 2015 A.D.), reads as above.

2. Submit the affidavit within 15 days and give first priority, too. Order of this Court, on the names of the opponents, of the date of 2072/3/31 (July 16, 2015 A.D.), reads as above.
3. Writ petitioner, Prashant Bishwas, asked how he could obtain Nepalese citizenship certificate by descent since his father was disappeared and his father did not have any brothers, he was given oral information on behalf of the Office, stating that if application was furnished in the prescribed format by attaching to it the evidence that he was a Nepali based on descent and including evidence of having permanent

residence under this district, the Office would provide citizenship by investigating. If it could not be justified that he was a Nepalese citizen by descent, he could furnish application for the sake of naturalized citizenship; then, he returned saying that he would furnish application by collecting evidence. Since then, he has not come back to contact in the Office. Upon being unable to gather ground, reason required to obtain citizenship certificate, this petitioner has filed writ petition making this Office an opponent; hence, it should be revoked. Affidavit, of the date of 2072/5/20 (September 6, 2015 A.D.) on behalf of District Administration Office, Sunsari, of Rabi Lal Pantha, the Chief of the same Office, reads as above.

4. In the writ petition that has been submitted to day before this Bench for the sake of decision upon being inducted to the weekly and daily cause list as per rule, learned advocate, Sunil Ranjan Singh and advocate Dipak Duwe, present on behalf of the petitioner, pleaded that there is no dispute that the petitioner, Prashant Bishwas, is the son of Nepalese citizen, Sabitri Shrestha Bishwas, who has obtained Nepalese citizenship certificate. His father, being disappeared, has not come to contact; hence, the fact that this Sabitri Shrestha is a Nepalese citizen by descent is clear according to the provision of Article 8 (2) (B), Clause 3 (1) of Nepal Citizenship Act, 2063. There is the provision that a person, whose father or mother has not been traced, shall obtain citizenship according to the process of Rule 33 (1) of Nepal Citizenship Rule, 2063. While requesting to obtain citizenship according to that process, the opponent, District Administration Office, Sunsari refused to be provided with citizenship. The opponent's act has been against including the international documents in which Nepal is a party as well as the Interim Constitution of Nepal, Nepal Citizenship Act, and Rule; hence, order should be issued on the names of the opponents so as to make interpretation that citizenship should be provided to the petitioner, Prashant Bishwas, and the victims like him, by mother's name.
5. Pleading has been heard, which has been made by learned deputy attorney, Mr. Sanjiv Regmi, present on behalf of including the opponent, including the Government of Nepal, stating that the Government of Nepal has not made any discrimination to provide citizenship to Nepalese citizens like the petitioner. For the sake of the substantive right of obtaining citizenship claimed by the petitioner, some

procedural processes should also be fulfilled. Citizenship is said to be provided when evidence documents including relationship verification deed of Gopal Bishwas mentioned by the petitioners as their father; but without submitting evidence documents to expose father's nationality and relationship having petitioner's father, in the condition of who the father has been, the writ petition furnished by deceiving the description that citizenship has not been provided should be revoked.

6. Upon hearing the pleadings as per above, after studying the document file and documents, in the present petition, is the order supposed to be issued as per claim? It appears that decision is to be made on this issue.
7. While considering towards the decision, it is seen to have been mentioned in the petition that the petitioner is the son of Nepalese citizens Gopal Bishwas having the house in Sunsari district, Dharan Municipality, Ward No 6, and Sabitri Shrestha (Bishwas). Petitioner's pleading is seen that upon having marriage of the father, Gopal Bishwas, with Sabitri Shrestha, a resident of Kathmandu district, Kirtipur Municipality, Ward No. 1, Prashant Bishwas was born on date 2050/6/5 (September 21, 1993 A.D.) from that matrimonial relationship, and the petitioner's father, Gopal Bishwas, disappeared without giving any information when he was in childhood condition or he was 5 years old, and father has no relatives, and father has not obtained citizenship either; hence, when application was furnished to obtain citizenship by mother's name, he was refused to be provided with citizenship. Upon seeing documents evidence replica copy attached to the petition, from citizenship certificate No. 538 issued by District Office, Kathmandu on date 2056/7/16 (November 2, 1999 A.D.) on her name, the matter that Sabitri Shrestha (Bishwas) is seen to have been a Nepalese citizen. Moreover, it is seen from the replica copy attached to the spot investigation deed made by the local persons, and document file with migration document of the date of 2071/12/13 (March 27, 2015 A.D.), and that father has not obtained citizenship certificate and father has no brothers and father, Gopal Bishwas, has been disappeared.
8. From birth registration certificate of Dharan Municipality, it is seen that the petitioner, Prashant Bishwas, was born on date 2050/6/5 (September 21, 1993 A.D.). The petitioner is seen to have mentioned in the writ petition that he furnished application to District

Administration Office, Sunsari, Dharan on date 2071/12/13 (March 27, 2015 A.D) to obtain citizenship by descent by identifying by mother, upon fulfilling all documents including birth registration, educational qualification, migration, voter's identity card of the mother, spot investigation deed and recommendation of local registrar and legal process. Affidavit of the opponent, District Administration Office, Sunsari is found to have stated that when the petitioner contacted to its Office, he was told what, what kinds of evidence have to be submitted to obtain citizenship by descent.

While looking into our constructional provision regarding citizenship, provision is seen to have been made in Section (B) of Sub-article 2 of Article 8 of the Interim Constitution of Nepal, 2063 that if "father or mother" of a person was a citizen of Nepal, he/she shall be a citizen of Nepal by descent. Similar kind of provision is seen to have been in Sub-article 2 (B) of Article 11 of the Constitution of Nepal. In Sub-article (1) of Clause 3 of Citizenship Act, 2063 formulated to implement the provision related to Nepal citizenship remained in the Constitution, there is the provision that if "father or mother" of a person was a citizen of Nepal at the time of his/her birth, he/she shall be a citizen of Nepal.

9. It is seen that due to the phrase "father or mother" used in the Constitution and Citizenship Act, if any one of "father or mother" is a Nepalese citizen, his/her children can obtain Nepalese citizenship certificate as soon as they reach the age of 16 years. The matter of obtaining citizenship from whose name of the father or the mother is the matter of choice of the person concerned. There is also the condition that this Court has accepted this matter (N.L.M. 2066 D.No. 8175 P. 1014). It is seen from the birth registration certificate that the petitioner was born in Nepal, at Sunsari district, Dharan Municipality, Ward No. 6 on date 2050/6/5 (September 21, 1993 A.D.), and it is seen to have been mentioned in the petition that since the father went away leaving the room without giving any information when the petitioner was in childhood condition or he was 5 years old, he has not returned, but disappeared and now he is not yet in contact, and that the father has not obtained citizenship either, and moreover, he has no brothers; hence, in the condition of the spot investigation deed done by the locals and document evidence of the migration and the recommendation made by local registrar submitted, and even in the condition of identification done by the

mother, he has been refused to be provided with recommendation for the sake of citizenship certificate. Regarding the reason, fact that the opponent, District Administration Office, has refused this matter, there is no condition to say anything.

So far as, there is an issue that the petitioner has said that the father has been disappeared. It is not right that the petitioner cannot obtain citizenship simply because the father has been disappeared. Upon looking through the relativity of the provisions of Sub-article (3) of Article 8 of the Interim Constitution of Nepal, 2063 and Article 11 (4) of the Constitution of Nepal it is seen that every minor who is found within Nepal and whereabouts of whose father and mother are not known shall be a citizen of Nepal by descent; whereas in Article 11 (5), the provision is seen to have been made in the Constitution stating that a person, who is born in Nepal from a woman who is a citizen of Nepal and has resided in Nepal, and whose father is not traced, obtains the citizenship of Nepal by descent; but, if father is deemed as a foreign citizen later, the citizenship of descent of such person shall be converted into naturalized citizenship. There is not the condition here that the father or mother has not been found or father could not be identified. The petitioner has clearly mentioned his father's name and address. The petitioner's statement is that father, Gopal Bishwas, has been out of contact without giving any information and father does not have any other brothers. It does not appear from the affidavit that this is not the matter. When there is constitutional provision in the Constitution and in the Act that citizenship can be obtain from the name of father or mother, the petitioner can furnish application attaching mother's citizenship in such a situation. In this condition, when the applicant submits mother's citizenship certificate, documents and spot investigation deed and including recommendation of local registrar, it is not right to refuse to provide citizenship certificate. There is the condition that father has not obtained Nepalese citizenship; in this condition, petitioner is supposed to be provided with citizenship by descent or naturalized; up to this can be seen as an issued for decision.

10. From birth registration certificate, it is seen that the petitioner, Prashant Bishwas, was born in Sunsari district, Dharan V.D.C., Ward No. 6 on date 2050/6/5 (September 21, 1993 A.D.). From the birth registration and S.L.C. certificates, it is seen that the petitioner has completed 16 years of age. There is not

dispute that being a Nepalese citizen, Sabitri Shrestha, the petitioner's mother, she was born in Kathmandu district, Kirtipur Municipality, Ward No. 1 on date 2030/5/6 (August 22, 1973 A.D.) and citizenship certificate of C.C.No. 538 was issued on her name by District Administration Office, Kathmandu on date 2056/7/16 (November 02, 1999 A.D.); hence, the petitioner is seen to have been a qualified person to obtain citizenship certificate of Nepal if he fulfills procedure prescribed in Nepal Citizenship Act and Rule of the same.

11. Citizenship certificate identifies a person as a citizen of a particular country. Without becoming a citizen, political rights cannot be used. Citizenship certificate is very necessary to use political and economic rights and to identify as a citizen. State provides various fundamental rights to its citizens such as using fundamental rights, obtaining employment, taking up public posts, using political rights, obtaining social security, casting votes. Political rights are not obtained by persons other than the citizens. Citizenship is a very sensitive issue linked with personal and national identity of a person; hence, it is not just to trouble a person posing tiny hurdles of procedure in the condition that he/she is a citizen.
12. There are provisions regarding the right to equality made in Article 18 of the Constitution of Nepal. The right of Article 18 is the fundamental right to be obtained by all the citizens without making discrimination. In Article 18 (1), it is guaranteed that all the citizens shall be equal before law and no person shall be denied the equal protection of law. The matter that no person shall be discriminated on the ground of sex has been mentioned in Article 18 (2). In addition to this, in Sub-article (1) of Article 38, there is the provision that every woman shall have equal lineage right without gender-based discrimination. Successor of the lineage and equal right of identity shall fall within equal lineage right. However, present petition was filed when the Interim Constitution of Nepal was effective; but here seems no ground and reason that the petitioner shall not obtain the rights conferred by new Constitution or the Constitution of Nepal.
13. Though the matter that the petitioner's mother, Sabitri Shrestha (Bishwas), is a citizen of Nepal is being justified by her citizenship certificate of Nepal, this petitioner is staying at maternal uncle's house because his father was disappeared, and father has not obtained citizenship certificate, father has no other brothers, and even upon submitting the

migration deed and spot investigation evidence document; if citizenship certificate of Nepal is not issued to the petitioner, here it is seen the condition of breaching of the fundamental right of not just the petitioners but of his mother, Sabitri Shrestha. It is seen that the opponent, District Administration Office has not heeded towards the matter that such act of discrimination meted out upon women based on gender shall kidnap the right to equality of women.

14. From this Court, on the writ petition having including Sabina Damai versus the Government of Nepal (Writ No. 2067-WO-0703 N.L.M. 2068 D.No. 8557 Number 2 Page 247), mandamus is seen to have been issued by this Court on the name of District Administration Office to provide citizenship by mother's name as well. After that, the affidavit of the Office of the Prime Minister and the Council of Ministers appears that decision was made on the writ petition having including Laxmi Lama versus the Government of Nepal (Writ No. 2070-WO-0817) that through the letter of the date of 2068/3/6 (June 20, 2011 A.D.), it was sent by writing to the ministry of Home Affairs for the sake of implementation, and from Ministry of Home Affairs has made circulation through the letter of the date of 2068/5/5 (August 22, 2011 A.D) to all District Administration Offices and the bodies concerned. Similarly, in the writ petition having including Bhola Nagarkoti versus the Government of Nepal (Writ No. 2069-WO-0880) also, it was issued by this Court that citizenship should be provided by mother's name as well. The decision made on the petition of Ranjita Thapa has been mentioned above. Thus, it is also seen that the matter that citizenship can be obtained by the name of Nepalese citizen mother has already been established. Since the petitioner's claim is that citizenship should be obtained by mother's name, the matter where the father has gone or what has happened is seen as irrelevant. Though there is provision that citizenship can be obtained by mother's name, to deprive the petitioner of the citizenship is considered as an act done against the law. The official having legal right shall have to fulfill his/her duty. Not to do so appears not just against equality but also contrary to equity. It seems essential to look into this subject matter by the opponent Office itself by being sensitive since the petitioner has said that he has furnished application to District Administration Office, Kathmandu.

Hence, from the aforementioned ground and reason, in the present petition, the matter that

Sabitri Shrestha, the mother of the petitioner, Prashant Bishwas, is a Nepalese citizen is also justified, and the petitioner, Prashant Bishwas, is seen to have been born in Nepal from Nepalese citizen Sabitri Shrestha; hence, it is decided that mandamus order shall be issued on the name of District Administration Office, Kathmandu not to refuse to provide citizenship by mother's name if the petitioner furnishes application by submitting mother's citizenship. It has been exposed that circulation has been made to all the District Administration Offices as per the decision made by this Court on the writ petition of aforementioned Sabina Damai on the issue that citizenship can be obtained by mother's name; hence, it seems that re-order is not supposed to be issued on the names of

all the District Administration Offices. Provide information of the order, and submit the document file to the record section, striking off the record of the case file.

Justice

I agree with the aforementioned opinion.

Justice

Bench officer: Mana Kumari G.M.B.K. (Under-Secretary)

Computer type: Prem Bahadur Thapa

Done on Sunday on the day 13th of the month of *Bhadau* in the year 2073 B.S. (*Sunday, August 29, 2016 A.D.*)



Bhadra 13, 2073 (29th August, 2016)

Supreme Court

Special Bench

Honorable Justice Dr. Aananda Mohan Bhattarai

Honorable Justice Prakashman Singh Raut

Order

070-WO-0817

Subject: Mandamus et al

Laxmi Lama, being a resident of ward No 8 of Gorakhani VDC of Solukhumbu district living at ward No. 11 Thapathali of Kathmandu Metropolis of Kathmandu district.....1
 Sharmila Lama, being a resident of ward No 8 of Gorakhani VDC of Solukhumbu district living at ward No. 11 Thapathali of Kathmandu Metropolis of Kathmandu district.....1 Petitioner

Vs.

Nepal Government, Office of Prime Minister and Council of Ministers, Singhadurbar Kathmandu1
 Nepal Government Ministry of Home, Singhadurbar, Kathmandu1
 Nepal Government Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs Singhadurbar Kathmandu1
 Office of ward No. 11 of Kathmandu Metropolis Thapathali, Kathmandu1
 Office Secretary, Ward No 11 of Kathmandu Metropolis1 Defendant

Brief facts and order of the present writ petition that has been submitted to upon being fallen within the jurisdiction of this Court as per Article 107 (2) of the Interim Constitution of Nepal, 2063 are as follows:

1. We, the petitioners, Laxmi Lama and Sharmila Lama, are the victims of being deprived of Nepalese citizenship.
 We are the daughters of Buchchhi Tamang, a resident of Solukhumbu District, Gorakhani V.D.C., Ward No 8. Upon having love marriage of the mother with Mangal Bahadur Lama, a resident of Solukhumbu, we, the petitioners, were born. Our father used to work as a porter of tourists. I, the youngest daughter, Sharmila Lama, was in the mother's womb when the father came to Kathmandu in 2052 B.S. (1995/96 A.B.) along with the tourists, but did not go back to Solukhumbu later again. The father has not been in our contact and information since that time. After the father became contactless, mother came to Kathmandu in search of father taking both of us. After having no information

of the father, she kept on nurturing both of us by working at a carpet factory. Upon obtaining opportunity of higher education in scholarship in Indra Dhanush School in Kathmandu, Balaju, citizenship is needed; hence, when we went to Kathmandu Metropolitan City, Ward No. 11 to get recommendation for the sake of obtaining citizenship by mother's name, the administrative chief of the Ward returned us asking to go for carrying the migration deed, and while going to the aforementioned Office again carrying the migration deed, we were refused to be provided with recommendation, saying that red land ownership having our house in Kathmandu and until that was not brought recommendation could not be provided. Our mother has been nurturing us, the petitioners, by doing labor on wage; hence, our mother has no property, nor land, house; our parents are Nepalese citizens, and we were born in Nepal from Nepalese citizen mother; in this condition, by being deprived of obtaining

- citizenship, we have been rendered stateless and without citizenship, have been deprived of human rights including the right to identity and right of nationality and right to equality; and it has been against the provision of Article 8 (2) (B) of Part 2 of the Interim Constitution of Nepal, 2063 that if father or mother of a person was a citizen of Nepal at the time of his/her birth, such person shall be a Nepalese citizen by descent, and the provision of Clause 3 of Nepal Citizenship Act, 2063 to obtain Nepalese citizenship; moreover, it has been opposite to Article 15 of Universal Declaration on Human Rights, 1948, Article 24 of International Covenant on Civic and Political Rights, 1966, Article 7 of Convention on the Rights of the Children, including Article 9 of Convention on the Elimination of all Forms of Discrimination Against Women, 1979; hence, order, command including mandamus, whichever is needed, should be issued to provide citizenship by mother's name as per law, and to interpret it in connection to the victims across the country like us. Joint writ petition of Laxmi Lama and Sharmila Lama, of the date of 2071/2/13 (May 27, 2014 A.D.), residents of K.D., K.M.C., Ward No. 11, reads as above.
2. Submit affidavit within 15 days. Order of this Court of the date of 2071/11/27 (March 11, 2015 A.D.) on the name of the opponents reads as above.
 3. Upon remaining under Section (B) of Sub-article 2 of Article 8 of the Interim Constitution of Nepal, Clause 3 of Nepal Citizenship Act, 2063, Nepal Citizenship Rule, 2063 and the directives made under this, the Government of Nepal is providing Nepalese citizenship by descent, and no Nepalese citizen has been denied to obtain citizenship by descent as per aforementioned law; moreover, this Ministry has no involvement in the act of providing citizenship; hence, the writ petition furnished by making the irrelevant body, this Ministry, an opponent, should be revoked. Affidavit of Dr. Narendra Man Shrestha, For Secretary of the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, of the date of 2071/3/9 (June 23, 2014 A.D.), reads as above.
 4. Writ petition is not supposed to be filed by making this Ministry an opponent even upon the act, action, decision made by other body authorized to carry out work as per prevailing law. If application is furnished by fulfilling the process as per law, stating that recommendation should be provided for the sake of obtaining citizenship of Nepal, the body concerned must provide recommendation.
- Regarding providing citizenship by mother's name, in the writ petition having the petitioner including Sabina Damai versus the Government of Nepal (Writ No. 2067-WO-0703), order was issued by this Court on the name of including this Ministry; hence, for its implementation, through the letter of this Ministry of the date of 2068/5/5 (August 22, 2011 A.D.), and on date 2069/10/7 (January 20, 2013 A.D.) regarding issuing C.C.No.by mother's name as well, all the District Administration Offices has been circulated; hence, in the context of the same issue, there is no condition to issue order by this Court; hence, the writ petition should be revoked. Affidavit of Mr. Surya Prasad Subedi, Secretary of Ministry of Home Affairs, of the date of 2071/3/17 (July 1, 2014 A.D.) reads as above.
5. For the sake of providing citizenship as per the claim of the writ petitioner, instead of furnishing application by attaching documents to justify the description of the place remaining land and house from where they have come by migrating from the previous address, it was not furnished; hence, recommendation has not been made; recommendation has not been made due to the lack of necessary documents; hence, writ is not supposed to be made as per the opponent's claim. The petitioners have not been deprived of obtaining citizenship. If application is furnished to the Solukhumbu District Administration Office, from where the petitioners' mother has obtained citizenship, by fulfilling necessary process, they can obtain citizenship; hence, the writ petition furnished to get rid of the trouble to go to home district from the Capital City, should be revoked. Joint affidavit of Mr. Ambika Khadka, Administrative Chief, on behalf the Office of Ward No. 11 of Kathmandu Metropolitan City and in connection to him as well, of the date of 2072/3/22 (July 7, 2015 A.D.), reads as above.
 6. The writ petitioners have not been able to expose what, what kinds of act, action or decision of the Office of the Prime Minister and the Council of Ministers has breached what, what kinds of the rights of the opponents, writ petitioners. It is not supposed to make this Office an opponent on the issue of providing citizenship. It cannot be said otherwise to the matter that the party to ask for the citizenship of Nepal shall have to furnish application to the body concerned by complying with the process and procedure determined in the Act and Rule. The lien on posts, who have legal duty, shall have to provide the recommendation for citizenship and the citizenship certificate by

being under the existing law. Upon looking into regarding providing citizenship of Nepal by mother's name, on the writ petition having including Sabina Damai versus including the Government of Nepal (Writ No. 2067-WO-0703), directive order was issued on the name of the Ministry of Home Affairs on date 2067/11/15 (February 27, 2011 A.D.) by this Court to provide citizenship of Nepal to the petitioner by mother's name, to arrange necessary provisions circulating on the names of all the Chief District Officers to easily provide citizenship certificate by fulfilling the rule and procedure of Nepal citizenship Act, 2063 and Rule of the same if the children born in Nepal from Nepalese citizen mother come to ask for the citizenship by mother's name, and move necessary and effective steps to eradicate perverted customs, usage and traditions remained in the society; for the sake of its implementation, it was sent by writing to the Ministry of Home Affairs through the letter of the date of 2068/3/6 (June 20, 2011 A.D.); the letter for information that 3 points circulation was made to all the District Administration Offices through the letter of the date of 2068/5/5 (August 22, 2011 A.D.) has been received; hence, it seems that the condition to issue the re-order regarding the same issue does not exist. From the affidavits of the body and lien on posts shall be clear in connection to other claim. Hence, from the aforementioned ground and reason as well, there is no condition to issue any order on the name of this Office as per the claim of the opponent petitioner; the writ petition should be revoked. Affidavit of Mr. Raju Man Singh Malla, Secretary of the Office of the Prime Minister of the date of 2071/3/6 (June 20, 2014 A.D.) reads as above.

7. In the present petition which was submitted today before the Bench upon being inducted to the daily and weekly cause list as per rule, learned advocate Meera Dhungana and advocate Sushma Gautam, present on behalf of the petitioners, pleaded that there was no dispute that the petitioners, Laxmi Lama and Sharmila Lama, were the daughters of a Nepalese citizen, Buchchhi Tamang. Since the father had come to Kathmandu to become a porter of tourists, he had been out of contact. Hence, as per the provision of Article 8 (2) (B) of the Interim Constitution of Nepal, 2063, Clause 3 (1) of Nepal Citizenship Act, 2063, the fact that this Buchchhi Tamang was a citizen of Nepal was clear. There was the provision that such person, who did not have the whereabouts of father or mother, could obtain citizenship as per the process of Rule 3 (3) of Nepal

Citizenship Rule, 2063. However, by fulfilling the aforementioned legal process, Laxmi Lama and Sharmila Lama furnished application to the opponent, the Office of Ward No. 11 of Kathmandu Metropolitan City, to obtain citizenship by mother's name, but the opponent Office, giving oral order stating that evidence of red land ownership certificate of the same place of coming by migration should be submitted by fulfilling, recommendation for citizenship did not provide; hence, these petitioners, Laxmi Lama and Sharmila Lama, were compelled to live without citizenship and stateless condition, and were deprived of the legal right including constitutional right to obtain citizenship to be obtained as a citizen. The aforementioned act of the opponent was against including the international documents of which Nepal was a party as well as the Interim Constitution of Nepal, Nepal Citizenship Act and Rule, 2063. Hence, necessary order should be issued on the names of the opponents so that it could be interpreted that citizenship should be provided for the petitioners, Laxmi Lama and the victims like them.

8. Joint attorney, Mr. Kiran Paudel, present on behalf of the opponent, the Government of Nepal, pleaded, stating that the Government of Nepal had not made any discrimination to the Nepalese citizens like the petitioners. For the substantive right to obtain citizenship claimed by the petitioner, some procedural processes should be fulfilled. The petitioners had not gone to the District Administration Office. Migration should be registered on the office of local lien on post. Laxmi Lama declined to obtain citizenship certificate from the father's address because the father was disappeared; hence, citizenship would be provided if came by fulfilling the process as per prevailing law. Hence, the writ petition should be revoked.
9. Learned advocate, Mr. Raj Prasad Bhandari, present on behalf of K.M.C., Ward No. 11, pleaded that if the petitioners had fulfilled all the processes, recommendation would have been made for citizenship. The petitioners furnished the petition due to the complication of going to home district; hence, the writ should be revoked.
10. Upon hearing including the aforementioned pleadings, while considering towards the decision, is the order supposed to be issued in the present case as per petition claim or not? It is seen that decision is to be made on this issue.
11. In this, it is mentioned in the petition that the petitioners Laxmi Lama and Sharmila Lama, are the daughters of Nepalese citizens,

Buchchhi Tamang and Mangal Bahadur Lama, having house in Gorakhani V.D.C., Ward No. 8 of Solukhumbu Distric. It is seen in the petition that love marriage was held between father and mother, and after they were born from the same matrimonial relationship, the petitioners' father came to Kathmandu in 2052 B.S. (1995/96 A.D.) for some days along with tourists, but he did not go back to Solukhumbu again; hence, in 2055 B.S. (1998/99 A.D.) mother came to Kathmandu taking us, two children, to search for the father, Mangal Lama; but nothing of the father's information could be obtained, mother nurtured us, working at a carpet industry.

12. Upon seeing the replica copy of the citizenship attached to the petition, from the replica copy attached to the document file, citizenship certificate of No. 245/1665/305 is seen to have been issued on her name from Solukhumbu District Administration Office on date 2044/11/17 (February 29, 1988 A.D.), upon being born in Gorakhani V.D.C. of Solukhumbu district on date 2021/1/1 (April 13, 1964 A.D.).
13. From S.L.C. certificates and migration document it appears to have been exposed that the petitioners, Laxmi Lama and Sharmila Lama were born on date 2048/6/19 (October 5, 1991 A.D.) and 2059/1/3 (April 16, 2002 A.D.). Present writ petition is seen to have been furnished because the petitioners could not obtain Nepalese citizenship certificate yet by being refused to be provided with the citizenship certificate of Nepal because they could not submit the red land ownership certificate having house and land at the place where they are presently living after the father did not come into contact being disappeared, upon coming by migrating. The chief of K.M.C., Ward No. 11 is seen to have admitted in the affidavit the matter of denying recommendation for citizenship due to the lack of evidence of having house and land.
14. Upon looking into our constitutional provision regarding the citizenship, in Section (B) of Sub-article 2 of Article 8 of Interim Constitution of Nepal, 2063, it is seen that there is the provision that if "father or mother" of a person was a citizenship of Nepal at the time of his/her birth, such person shall be a citizen of Nepal. There is a similar type of provision in Sub-clause (2) of Article 11 of the present Constitution of Nepal. In Sub-clause (1) of Clause 3 of Citizenship Act, 2063, which was made to implement the provision relating to citizenship remained in the Constitution, it is seen that there is a provision that if "father or mother" of a person was a citizen of Nepal, such person shall be a citizen

of Nepal. From the phrase "father or mother" used in the Constitution and Citizenship Act, it is seen that if any one of the father or mother is a Nepalese citizen, his/her children can obtain Nepalese citizenship certificate as soon as they are 16 years of age. The matter of obtaining citizenship by whose name of father or mother is the matter a person's making choice. The condition is that this matter has been accepted by this Court. (N.L.M. 2066, D.No. 8175 P. 1014). Hence, it is not responsible to tell them to go to an inconvenient district when application is furnished from the place where the petitioners are residing.

15. It is seen to have been mentioned in the petition that although the evidence that the petitioners were born in Gorakhani V.D.C. of Solukhumbu district is exposed from the migration document; and, due to the reason that they did not have birth registration certificate neither did they have the evidence document of having house and land at the place where they came by migrating, they were not provided with the citizenship certificate of Nepal. While looking into this context, first of all, when the petitioners have said that father has been disappeared, it is not that petitioners shall not obtain citizenship simply because father has been disappeared. Upon looking into the relativity of the provision of Sub-article (3) of Article 8 of the Interim Constitution of Nepal, 2063 and Sub-article (4) of Article 11 of the Constitution of Nepal, it is seen that there is provision that even in connection to the person, who is found in Nepal whose father and mother's whereabouts are not known, he/she can obtain citizenship by descent; whereas, in Article 11 (5) of the Constitution of Nepal, it is seen that there is the provision that a person who was born in Nepal from a woman who is a citizen of Nepal and has resided in Nepal and whose father is not traced can obtain citizenship of Nepal by descent. It appears that if only father is held to be a foreign citizen, the citizenship of the person who has obtained citizenship by descent by mother's name, shall be converted to naturalized citizenship. Here is not the condition of the parents not traced or father not identified. The petitioners have clearly mentioned his father's name and address. Their statement is that the father, Mangal Bahadur Lama, has been a porter of tourists and has been disappeared since 2052 B.S. (1995/96 A.D.). From the affidavits of the opponents, it is not seen that this is not the matter. As a main thing, when the provision is made in the Constitution and Act citizenship

can be obtained by the name of any one of father or mother, application can be furnished attaching to it the mother's citizenship. In such a situation, it is not right to refuse to provide citizenship certificate by posing hurdle that petitioner could not submit the father's certificate.

16. From the migration certificate, it is seen that the petitioners were born in Gorakhani V.D.C. of Solukhumbu district. It is seen from the S.L.C. certificate of the School that they are over 16 years of age. There is no dispute that upon being a Nepalese citizen by descent, the petitioner's mother obtained citizenship certificate of C.C.No. 245/1665/304 from District administration Office of Solukhumbu district; hence, the petitioners are seen to have been the persons qualified to obtain citizenship certificate of Nepal if they fulfill the procedure prescribed in Nepal Citizenship Act, 2063 and Rule of the same.
17. Here, the petitioners are seen to have been fallen in trouble due to the reason that they have been denied to be provided with the recommendation by Ward Committee when the recommendation, as per prescribed in the Act and Rule, was demanded. Citizenship certificate identifies a person as a citizen of a particular country. Without becoming a citizen, political rights cannot be used. Citizenship certificate is very essential to use political and economic rights and to identify as a citizen. State provides its citizens various fundamental rights such as using fundamental rights, obtaining employment, taking up public post, using political rights, to obtain social security and casting vote etc. political right is not obtained by the person other than a citizen. Citizenship is a very sensitive issue linked with the personal identity and of a person; hence, if substantially seen as a citizen, it is not just to trouble by posing tiny hurdle of procedure.
18. Provision is made in Article 18 of the Constitution of Nepal regarding right to equality. The right of Article 18 is a fundamental right to be obtained by all the citizens without discrimination. It is guaranteed in Article 18 (1) that all the citizens shall be equal before law and that nobody shall be deprived of the equal protection of law. The matter that nobody shall be treated with gender-based discrimination has been made mentioned in Article 18 (2). In addition to this, provision has been made in Sub-article (1) of Article 38 that every woman shall have equal lineage right without discrimination. Successor of the lineage and equal right of identity shall also fall within the equal lineage right. Though

present petition was filed when the Interim Constitution was prevailing, here seems no ground and reason that the petitioners shall not obtain the rights guaranteed by the new Constitution or the Constitution of Nepal.

19. Though, from her citizenship certificate of Nepal, it is justified that Buchchhi Tamang, the petitioners' mother, is a citizen of Nepal; by not issuing citizenship certificate for the petitioners showing cause that their father has been disappeared or that red land ownership certificate of having house and land has not been submitted, here appears a condition that the fundamental rights of not just the petitioners but their mother, Buchchhi Tamang, as well are also affected. It is not seen that opponents' view has not pointed towards the matter that such act of discrimination meted out upon the women based on gender kidnaps the right to equality of the women.
20. In the writ petition having including Sabina Damai versus the Government of Nepal (Writ No. 2067-WO-0703 N.L.M. 2068 D.No. 8557 Number 2 P. 247), mandamus is seen to have been issued by this Court on the name of District Administration Office to provide citizenship by mother's name as well. After that, from the affidavit of the Office of the Prime Minister and the Council of Ministers it is seen that it was circulated from the Office of the Prime Minister and the Council of Ministers to Ministry of Home Affairs on date 2068/3/6 (June 20, 2011 A.D.) and from Ministry of Home Affairs to all District Administration Offices and the bodies concerned through the letter of the date of 2068/5/5 (August 22, 2011 A.D) for the sake of implementation of that order. Similarly, in the writ petition having including Bhola Nagarkoti versus the Government of Nepal (Writ No. 2069-WO-0880) also, it was issued by this Court that citizenship should be provided by mother's name as well. The decision made on the petition of Ranjita Thapa has been mentioned above. Thus, it is also seen that the matter that citizenship can be obtained by the name of Nepalese citizen mother has already been established. Since the petitioner's claim is that citizenship should be obtained by mother's name, the matter where the father has gone or what has happened is seen as irrelevant. When the petitioners have claimed that they have been residing in Ward No. 11 and that they have been studying in Kathmandu, whether they live or do not live in that Ward can be learned by examining the house owner or getting enquiry done in the lane. When said that recommendation is made only on the

ground of the certificate of having immovable land, this shall deprive the persons, who have no immovable land or house, of obtaining citizenship. In this situation, it is not seen concord to law to say that recommendation shall not be provided. Such matter is seen to have been against the right to equality; hence, there is no condition to accept this.

21. Hence, from the aforementioned ground and reason, in the present petition, the matter that Bichchhi Tamang, the mother of petitioners, Laxmi Lama and Sharmila Lama, is a Nepalese citizen is also justified, and the petitioners are seen to have been born in Nepal from Nepalese citizen, Bichchhi Lama; hence, it is decided that mandamus order shall be issued on the name of Office of Kathmandu Metropolitan City, Ward No. 11, and on the name of the opponent Ministry of Home Affairs and under it, District Administration Office, Kathmandu not to deprive of citizenship on the ground that they have not submitted father's citizenship, but to provide citizenship, as per claim, if the petitioners establish in any way

that they are residing within its jurisdiction and if they submit mother's citizenship. It has been exposed that circulation has been made to all the District Administration Offices as per the decision made by this Court on the writ petition of aforementioned Sabina Damai on the issue that citizenship can be obtained by mother's name; hence, it seems that re-order is not supposed to be issued on the names of all the District Administration Offices. Provide information of the order, and submit the document file to the record section, striking off the record of the case file.

Justice

I am with the said opinion.

Justice

Bench Officer: Mankumari G.M. B.K (Under-Secretary)

Computer Setting: Prem Bahadur Thapa

2073/05/13/01 (Monday, 29th August, 2016)

Bhadra 13, 2073 (29th August, 2016)

Supreme Court

Division Bench

Hon. Justice Mr. Gopal Parajuli

Hon. Justice Mr. Bishwambhar Prasad Shrestha

Decision

069-WO-0735

Subject: Mandamus

Siwani Kharel, daughter of Sharmila Gautam and Bipin Kharel, a resident of ward No. 7 of Naikap, Purano Bhanjyang VDC of Kathmandu district1 Petitioner_

Vs.

Government of Nepal, Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu1

Government of Nepal, Ministry of Home Affairs, Singha Durbar, Kathmandu1

Government of Nepal, Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, Singha Durbar, Kathmandu1 Respondent

Government of Nepal, Ministry of Federal Affairs and Local Development, Singha Durbar, Kathmandu1

District Administration Office, Kathmandu (Babar Mahal).....1

Chief District Officer, District Administration Office, Kathmandu (Babar Mahal)1

The brief facts of this case duly fallen under the jurisdiction of this Court pursuant to Articles 32 and 107(2) of the Interim Constitution of Nepal, 2007 are as follows:

I, applicant Siwani Kharel have been daughter of Bipin Kharel, permanent resident of Dhangadhi Municipality-3 Kailali and living by renting room in Kathmandu and Sharmila Gautam, resident of Naikap, Purano Bhanjyang VDC ward No. 7 of Kathmandu district and that I was born at Maternity Hospital, Thapathali Kathmandu on 2051/01/10 (23 April, 1994). Both my father and mother have been Nepali citizens. As the father remained out of contact without information, depriving of food clothing to my mother, brother and me too, without discharging his duty toward his wife and children, I, the applicant and brother as well, were brought to her parental home by the mother at ward No. 7 of Naikap, Purano Bhanjyang VDC of Kathmandu district and since then we are living at maternal uncle's home. After passing SLC, the citizenship was required, following which mother Sharmila Gautam

applied for the search of father Bipin Kharel before the Police Administration over which the action was initiated on which promising to appear on 2068/12/20 (02nd April, 2012) deed was executed on 19 (01st April, 2012) before the Metropolitan Police Office premises, Kathmandu and remained absent, rather field injunction case before the Appellate Court, Patan against the mother and grandmother over which the interim order was issued from the Appellate Court on 2068/12/22 (04th April, 2012).

Provision has been introduced on Section 3(1) of the Nepal Citizenship Act, 2007 stipulating that: In case either father or mother is a Nepali citizen at the time of birth of his or her offspring, then such offspring shall be a citizen of Nepal by descent and whereas I requested the different bodies for the co-operation so that I could have obtained citizenship by the name of my father, he has been rejecting till present to confer citizenship to me and remained out of our contact and that due to lack of citizenship I applicant, have been deprived of filling up the form in order to pursue higher education and got

deprived of the basic human rights of the education and that applied before Naikap Purano Bhanjyag VDC on 2069/07/25 (10th November, 2012) so as to obtain citizenship by the name of mother in citizenship on 2069/07/26 (11th November, 2012) over the application duly public opinion was collected on 2069/07/26 (11th November, 2012) and stipulating all the afore stated content I filled up and submitted the form seeking for the citizenship certificate before the District Administration Office, Kathmandu based on the form of Sub-rule 1 and 3 of the Rule 3 over which the Chief District Officer verbally responded that I could not be granted Citizenship certificate of my father, by which I have been bound to live stateless.

The Interim Constitution of Nepal, Article 8 (2) (b) clearly provides that: In case either father or mother is a Nepali citizen at the time of birth of his or her offspring, then such offspring shall be a citizen of Nepal by descent. Moreover, Section 3 of the Nepal Citizenship Act, 2007 also stipulates under the title of the obtainment of Nepali Citizenship certificate on descent in sub-section (1) it has been stated that "In case either father or mother is a Nepali citizen at the time of birth of his or her offspring, then such offspring shall be a citizen of Nepal by descent". And accordingly the father or mother has been maintained under the definition of the descent.

Rule 3 (1) of the Citizenship Rules, 2007 lays down that: A Nepali citizen having completed 16 years of age and desirous of obtaining a Nepali citizenship certificate by descent, shall have to file an application before the concerned Chief District Officer by attaching the citizenship certificates of his or her father, mother or other close kith and kin within 3 generations, and a recommendation of local body disclosing the place of birth and relation or a copy of birth registration certificate, in the form of Schedule-1 and that upon the fulfillment for the process as per the said clear provision with the verification of the mother the obtainment of the citizenship is made by which the patriarchal psychology has been maintained and the oral order has been contrary with the provisions prevalent in the law.

The treaties and conventions to which Nepal has been a party with ratification have pursued the right of citizenship to be human right. Article 15 of the Universal Declaration of Human Rights, 1948 guarantees the right to citizenship for every person. It prevents arbitrary denial of citizenship right against any individual. Article 24 of the International Covenant on Civil and Political Rights, 1966 further prescribes that: Every child shall be registered immediately after birth and shall have a name. Every child shall have the right to acquire a nationality. Similarly, Article 9 (2) of the Convention

for the Elimination of All Forms of Discrimination against Women, 1979 lays down that: State parties shall grant women equal rights with respect to the nationality of their children. Our Constitution and laws also have followed suit. However, here is a case of injustice meted out when the State authorities arbitrarily define descent and deprive a person from the right of acquiring citizenship as well as identity. Article 7 of the Convention on Rights of Child, 1989 also stipulates that: The child should be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his/her parents.

The provisions of international treaties and conventions above have ascertained the right to transfer citizenship among the men and women on an equal footing. Moreover, the provisions of international treaties and conventions as well as our Constitution and laws also have conferred on the mother the right of transferring citizenship to her offspring.

As per the decision of the esteemed court in the case of Ranjit Thapa et al. vs. the Government of Nepal, Office of the Prime Minister and Council of Ministers, Singh durbar et al on 2066/03/12 (26 June, 2009) stipulating that: There has been no controversy that Ranjit Thapa has been a Nepali citizen, in the circumstance that the petitioner has been conferred the right to obtain citizenship by the name of the father or mother as granted by Nepal Citizenship Act, 2007 and Nepal citizenship Rules, 2007 the matter to obtain citizenship by the petitioner only by the name of the father has been contrary to the said Nepal Citizenship Rules, 2007 as well and that it has been paradox with the intention of the Act and Rules and contrary to the international standards of Human Rights to which Nepal has been a party. Though the addresses of the father and mother of the petitioner are separate, an order of mandamus is hereby issued in the name of respondents to grant citizenship certificate to him from any one address out of his mother's or father's address of his choice in case he files with the recommendation of concerned body and fulfills the prescribed procedure. From the above precedent, an applicant is entitled to acquire citizenship certificate from any of the one address of his father or mother of his or her choice, I shall have been provided with the Nepalese citizenship certificate on descent.

As decided in the case of Sabina Damai et al. vs. the Government of Nepal, Office of the Prime Minister and Council of Ministers, Singh durbar et al (NKP 2068 No.2 247 Decision No. 8557), by the Supreme Court of Nepal with the directive order on 2067/11/15 (27.02.2011) in the name of Ministry of Home Affairs stipulating that: As As it is proved that

Sabina Damai was born to the Nepali citizen Ganga Maya Damai in Nepal, the mandamus is issued to the opponent District Administration Office to provide the Nepali citizenship certificate to the applicant in the name of the mother as per the law. As per the said decision I shall have been provided with the Nepalese citizenship certificate on descent.

Therefore, a mandamus be issued so that I the victim petitioner Siwani Kharel be granted citizenship in the name of the mother and the let the essential order be issued to the nationwide entire Offices of Village Development Committees, Metropolitan City, Sub-Metropolitan cities, Municipalities and their relevant ward offices, via the Ministry of Home Affairs and to the all 75 District Administration Offices with the interpretation that shall be applicable to the victim like me. The claim of the petitioner reads as such.

The order of this Court on 2069/10/02 (05.01.2013) read that: What has happened in this connection? Why an order as sought by the petitioner need not be issued? Let the respondents be served with a notice, that in case there is any reason for not issuing such order, let it be attached together and a written reply be submitted to this Court within 15 days excluding the time for travel. Let the case be duly submitted before the Bench once the written replies are received or if the deadline expires as per the rules.

The written reply furnished by Ministry of Home Affairs read that: It is an inherent right of all Nepali people to acquire citizenship as per the rules and a circular was also made by this Ministry on 2068/05/05 (22.08.2011) to its subordinate offices for issuing citizenship certificates in the names of mothers by fulfilling all of the processes laid down by the Act and Rules. Thus, the claim that citizenship certificate in the name of mother was denied is fake. Since this Ministry did nothing to violate the fundamental rights of the petitioner, let the writ petition be set aside in case of this Ministry.

The written reply furnished by Office of the Prime Minister and Council of Ministers of the Government of Nepal read that: In the case of issuance of citizenship certificate in the name of mother, in a writ petition involving Sabina Damai et al. as the petitioner (Writ petition no. 0703 of the year 2067 BS), the Supreme Court of Nepal had issued a directive order on 2067/11/15 (27.02.2011) in the name of Ministry of Home Affairs which provided that: Let the petitioner be granted a Nepali citizenship in the name of her mother, in case children born from Nepali mothers on Nepali soil seek to obtain citizenship in their mothers' names, then let them duly be provided with the citizenship certificate in an effortless manner by following the procedures of Nepal Citizenship Act, 2007 and Rules

thereof. Let this matter be communicated to the entire Chief District Officers as a circular and make the needful provisions. As such, a 3 point circular has been made to the entire District Administration Offices via a letter of Ministry of Home Affairs and being so, there is no need to issue a fresh order on the same topic. Thus, the writ petition needs to be quashed.

The written reply furnished by Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs read that: The task of distributing citizenship does not fall within the purview of this Ministry as per Nepal Government (Work Division) Rules, 2069. The petitioners have made this Ministry a respondent for an act which it did not perform. As such, let this claim be repudiated.

The written reply furnished by Ministry of Federal Affairs and Local Development read of the Government of Nepal that: The writ petitioners have failed to mention which act or decision of this Ministry had violated which of the constitutional and statutory rights of the petitioners. They seem to have made this Ministry a respondent without any sound reason or basis. As such, this act of petitioners seems to be prima facie revocable in the case of this Ministry. Hence, it is prayed that the writ petition be set aside.

The written reply furnished by District Administration Office, Kathmandu et al read that: Upon the submission of the Nepali citizenship certificate of Bipin Kahrel presented by the petitioner as the father and mother Sharmila Gautam and the recommendation letter of the local body and relationship certification of the father Bipin Kahrel and mother Sharmila Gautam and upon the submission of the application as per Nepal Citizenship Act, 2063, Citizenship Rules, 2063 and Nepali Citizenship Certificate Distribution Procedures Directives, 2063 the Nepali citizenship may be awarded from this office on the basis of descent in a simple manner and the distribution is made accordingly. As the petitioner was to submit as mentioned in the Citizenship Act, Rules and Directives, without doing so, making the basis that the verbal rejection was made so as to grant citizenship in the name of the mother, the petition filed on the said basis making this office opponent be quashed.

The papers enclosed in the case file were studied with respect to this case duly submitted before the Bench by ascending through the daily cause list.

The claim of the petitioner reads that: I, applicant Siwani Kharel have been daughter of Bipin Kharel, permanent resident of Dhangadhi Municipality-3 Kailali and living by renting room in Kathmandu and Sharmila Gautam, resident of Naikar, Purano

Bhanjyang VDC ward No. 7 of Kathmandu district and that I was born at Maternity Hospital, Thapathali Kathmandu on 2051/01/10 (23 April, 1994). Both my father and mother have been Nepali citizens. As the father remained out of contact without information, depriving of food clothing to my mother, brother and me too, without discharging his duty toward his wife and children, I, the applicant and brother as well, were brought to her parental home and since then we are living at maternal uncle's home. After passing SLC, the citizenship was required, following which mother Sharmila Gautam applied for the search of father Bipin Kharel before the Police Administration over which the action was initiated on which promising to appear on 2068/12/20 (02nd April, 2012) deed was executed on 19 (01st April, 2012) before the Metropolitan Police Office premises, Kathmandu and remained absent, rather filed injunction case before the Appellate Court, Patan against the mother and grandmother over which the interim order was issued from the Appellate Court on 2068/12/22 (04th April, 2012) and that he has been out of contact and that his whereabouts is unknown to me. Since he refused to grant me citizenship and that he has been out of contact and that applied before Naikap Purano Bhanjyang VDC on 2069/07/25 (10th November, 2012) so as to obtain citizenship by the name of mother in citizenship on 2069/07/26 (11th November, 2012) over the application duly public opinion was collected on 2069/07/26 (11th November, 2012). Stipulating all the afore stated content I filled up and submitted the form seeking for the citizenship certificate before the District Administration Office, Kathmandu over which the Chief District Officer verbally responded that I could not be granted Citizenship certificate until the submission of the copy of citizenship of the father and returned back the application refusing to initiate the action, therefore, my prayer for the issuance of the mandamus order in the name of the opponents so as to grant citizenship to the petitioner Siwani Kharel in the name of the mother. It is required to decide whether or not the order as per the claim of the petitioner be issued?

Mainly the petition mentions that the constitution has made a clear provision to confer citizenship on the basis of descent to the children in case one out of the father or mother of the petitioner has been Nepali citizen but the father of the petitioner Siwani Kharel has remained out of contact at present and that the petitioner Siwani Kharel has been deprived of the right to obtain citizenship. It seems from the citizenship certificate of Sharmila Gautam that it has been Nepali citizenship certificate and her address has been Naikap Pu. Bhanjyang VDC ward No.7. The character certificate of Siwani Kharel shows that she has been the daughter of Bipin Kharel. On the

recommendation issued by Village Development Committee Naikap Purano Bhanjyang Kathmandu it has been recommended that this petitioner Siwani Kahrel was born on 2051/01/10 (23 April, 1994) as the daughter of the father Bipin Kharel alias Raju and mother Sharmila Gautam. In observation of the case No.0623 of the year 068 being the petitioner Bipin Kharel opponent Sharmila Gautam, the letter issued from the District Administration Office Kathmandu on 2068/12/12 (25 March, 2012) with the title of submission of the person the interim order was issued on 2068/12/22 (04th April, 2012) for not to/ cause arrest, compel, force to enter deed. The afore stated facts show that Bipin Kharel presented by the petitioner as the father has been the Nepali citizen and in existence but the content of the petitioner's petition shows that the father has been out of the contact at present. Even though the confirm address of the father has not been seen along with the citizenship certificate the mother is seen to be the citizen of Nepal from her citizenship and the permanent address has also been clearly shown. Both the SLC Mark Sheet, Character Certificate of the petitioner Siwani Kharel have mentioned Siwani Kharel and "Kharel" as the surname. The character certificate has noted the father's name to be Bipin Kharel. As the petitioner Sharmila Gautam has mentioned that Bipin Kharel has been her husband and that search of Bipin Kharel to be carried out so as to make citizenship of the daughter before the District Administration Office and that following the submission of Bipin Kharel before the District Administration Office Kathmandu by the Metropolitan Police Premises Kathmandu for inquiry the injunction writ petition has been filed by Bipin Kharel before the Appellate Court Patan and that the file proofs do not show that the said Bipin Kahrel has certified that Sharmila Gautam has been the wife and Siwani Kahrel has been the daughter. Even though the role of the father is not seen for the stipulation of the particulars in the certificate of the petitioner the particulars shown by the mother have also evidential significance unless otherwise proved the matter as such could not be avoided otherwise. Article 11(2) of the Constitution of Nepal provides that: At the commencement of this Constitution, the following persons who have their permanent domicile in Nepal shall be deemed to be the citizens of Nepal by descent:

- (a) any person who has acquired citizenship by descent prior to the commencement of this Constitution;
- (b) any person whose father or mother was a citizen of Nepal at his or her birth.

Section 3(1) of the Nepal Citizenship Act, 2007 stipulates that: In case either father or mother is a Nepali citizen at the time of birth of his or her

offspring, then such offspring shall be a citizen of Nepal by descent. Similarly, Rule 3(1) of the Nepal Citizenship Rules, 2007 lays down the procedure for acquiring Nepali citizenship certificate by descent. It reads that: A Nepali citizen having completed 16 years of age and desirous of acquiring Nepali citizenship certificate by descent, shall have to apply before the concerned Chief District Officer pursuant to the format of Schedule-1, by attaching the following documents:

- a) Nepali citizenship certificates of father or mother or any other close relative within 3 generations;
- b) A recommendation made by the concerned local body which would reveal the birth place and relation or birth registration certificate;
- c) In case of submission of citizenship certificates of close relatives within 3 generations, then a certified letter revealing the relation with that relative.

Having Rule 3(1) of the Nepal Citizenship Rules, 2007 provided for such a procedure to acquire Nepali citizenship certificate by descent, here in this case, the Nepali citizenship certificate of mother duly verified by her, the academic certificates of petitioner Siwani Kharel, deed of public inquiry, the recommendation letter of the VDC as well have been present and the application for the citizenship certificate have also been submitted. Thus, from the constitutional and legal provisions above and the documents enclosed in case file, the petitioner Siwani Kahrel prima facie appears to be a Nepali citizen.

In the application seeking Nepali citizenship certificate of Siwani Kahrel, the address of mother and full name of the father have been disclosed. This Court has enunciated a precedent in the case of Petitioner Ranjit Thapa et al. vs. Office of the Prime Minister and Council of Ministers, Government of Nepal (065-WO-0035) which stipulated that: The petitioner has been the Nepali citizen and that even though the addresses of the father and mother of the petitioner have been different one, an order of mandamus is hereby issued in the name of respondents to grant citizenship certificate to him from any one address out of his mother's or father's address of his choice in case he files with the recommendation of concerned body and fulfills the prescribed procedures. From the above precedent, an applicant is entitled to acquire citizenship certificate from any of the one address of his father or mother of his or her choice. However, in the present case, the issue is only of a father being not found. Though there is a situation here of not being able to disclose the address of father due to his disappearance, the petitioner has been facing

hardship in the obtainment of the citizenship. However, as the name of applicant's mother is clearly provided, it would be equally lawful to issue citizenship certificate in the name of that mother as well.

From the study of above constitutional and legal arrangements, it is seen that women are granted equal rights on par with men. Further, this court has enunciated a precedent in the case of Petitioner Sabina Damai et al. vs. Office of the Prime Minister and Council of Ministers, Government of Nepal (Case: mandamus et al Decision No. 8557) which stipulated that: No one should be denied of citizenship due to the ignorance of prescribed official towards Constitution, laws and covenants pertaining to human rights neither through their flawed interpretation. Experiencing hardships in obtaining citizenship certificate cannot be tolerated; and that one can still attain Nepali citizenship certificate if one between his/her father and mother is a Nepali citizen.

The Constitution, laws and the precedents enunciated all have legally permitted for acquiring citizenship certificate by descent in case his or her father or mother is a Nepali citizen, and for the offspring, either of father or mother is an equal basis for lineage. At this context, when a father's whereabouts are not known, depriving someone from citizenship only because the name of father was written by mother or that she tried to write the address of father known to her, cannot be held as reasonable.

From the photocopy of the application, it is seen that the petitioner for attaining Nepali citizenship had indeed cited his father's name and tried to acquire citizenship from the mother's address of "Kathmandu District Naikap VDC, Ward No. 7", she also had filed an application before the Chief District Officer of District Administration Office, Kathmandu as per the format specified in Schedule-1 of the Nepal Citizenship Rules, 2007 as seen from the copy submitted along with this petition. In case she could not have been issued a citizenship certificate, then the Office is supposed to make a decision for addressing the application or to make further inquiries as required pursuant to the law and reach a conclusion. However, as no such order or decision is known of, it seems that the issue of whether to award citizenship to the petitioner or not, itself has remained in the dark.

Moreover, the respondent District Administration Office, Kathmandu was also expected to negate the writ plea through its written reply by revealing the factual or legal bases for denying the petitioner her citizenship. This way, it is learnt that the Office failed to give sufficient attention to the content

of application duly filed as per the format of Schedule-1. On the other hand, the respondent District Administration Office, Kathmandu, instead of simplifying and aiding the right of citizens to obtain citizenship pursuant to the Constitution, laws and the precedents enunciated, had failed or desired against even to enter into the merit of application and as such has trampled on discharging the lawful obligations of a public authority on whether a citizenship certificate should be issued or not.

The act of statutorily authorized agency or official denying someone of citizenship in the absence of any plausible reason and basis cannot be deemed as legitimate and proper. It is rather supposed to explore ways for assistance and simplification in granting citizens with citizenship as per the legal provisions. Instead, making delay on deciding whether or not to provide someone citizenship or not without a reasoned decision cannot be held as a proper course of law.

Hence, an order of mandamus is hereby issued in the names of respondent District Administration Office, Kathmandu, to promptly decide for the citizenship after holding examination of the matters required as per Nepal Citizenship Act, 2007 and Nepal Citizenship Rules, 2007 at the earliest and in

case the petitioner applies for acquiring citizenship by disclosing the name of father and address of mother in line with the certificate, and if the mother attests to the same at the office, then let the needful matters be inquired and let a decision on awarding citizenship be made forthwith by not depriving the petitioner from Nepali citizenship certificate and issuance of the recommendation for the citizenship just on the basis that she intended to write the name of father and address of mother as recorded certificate. Let this order be communicated to the respondents via the Office of Attorney General. Let the record of this writ be written off the registry and the case file be duly handed over.

Sd/-

(Justice)

I concur with the aforementioned opinion.

Sd/-

(Justice)

Bench Officer: Harka Bahadur Chhetri

Computer Operator: Mandira Ranabhat

[Done on Thursday, 29.08.2016]



Supreme Court

Division Bench

Honorable Justice Dr. Ananda Mohan Bhattarai

Honorable Justice Prakashman Singh Raut

Order

071-WO-0709

Subject: Mandamus et al

Srijan Kharel, a resident of ward No 7 Naikap Puranobhangyang of Kathmandu district.....1 Plaintiff
Vs.

Nepal Government, Office of Prime Minister and Council of Ministers, Singhadurbar
Kathmandu1
Nepal Government Ministry of Home, Singhadurbar, Kathmandu1
Nepal Government Ministry of Law, Justice, Constituent Assembly and Parliamentary
Affairs Singhadurbar Kathmandu1 Respondent
Nepal Government Ministry of Federal Affairs and Local Development Singhadurbar,
Kathmandu.....1
Nepal Government District Administration Office, Babarmahal Kathmandu1

Brief facts and order of the present writ petition that has been submitted to upon being fallen within the jurisdiction of this Court as per Article 107 (2) of the Interim Constitution of Nepal are as follows:

1. I, the petitioner, Srijan Kharel, am a victim of being deprived of Nepalese citizenship. Upon having love marriage between Bipin Kharel, a resident of K.D., K.M.C., Ward No 15 on rent upon having permanent address in Kailali district, Dhangadhi Municipality-3, and Sharmila Gautam, a resident of K.D., Naikap Purano Bhanjyang V.D.C., Ward No. 7, I, the petitioner, was born on date 2054/5/23 (September 8, 1997 A.D.), from that matrimonial relationship, at Paropakar Maternity and Gynecology Hospital, Thapathali, Kathmandu. Presently, I am 17 years old. My parents are Nepalese citizens. Father has been disappeared, leaving the rented room, since my childhood, depriving mother, elder sister and me of foods and clothes. Then, I, the petitioner, and elder sister were taken to her maternal home at K.D., Naikap Purano Bhanjyang, Ward No. 7. Presently, we are staying at maternal uncle's home. I was

educated at Him Shikhar Borading School, Kathmandu. After my elder sister passed S.L.C., citizenship was needed; hence, my mother, Sharmila Gautam, furnished application to the Police Administration, Kathmandu to take initiative to make citizenship by searching out the father, Bipin Kharel; while taking action upon that application, father went by making deed on 19th (April 1) to attend on date 2068/12/20 (April 2, 2012 A.D.) at Metropolis Police Premises, Kathmandu; he was absent at the Metropolis Police Premises, Kathmandu on the 20th (April 2); hence, filing a case of injunction order at Appellate Court, Patan against mother, grandmother, Police Office and including District Administration, father stayed out of contact upon getting the interim order issued by the Appellate Court, Patan on date 2068/12/20 (April 2, 2012 A.D.) on the reverse.

After passing S.L.C. in 2069 B.S. (2012/13 A.D.), when I, the petitioner, tried to search out the father in 2070 B.S. (2013/14 A.D.) for the sake of making citizenship, I could not get knowledge

and information. Citizenship was needed to fill up the form for the sake of higher education; hence, an application was furnished to the Office of Naikap Purano Bhanjyang V.D.C. on date 2071/7/14 (October 31, 2014 A.D.) for the sake of making citizenship by mother's name, getting me identified. By conducting spot investigation upon that application on date 2071/7/19 (November 5, 2014 A.D.) as per rule, by filling up the application form as per Sub-rules 1 and 3 of Rule 3 of Citizenship Rule, 2063, it was submitted to the District Administration Office, Kathmandu explaining all the descriptions, to obtain citizenship certificate, but the Chief District Officer returned us, orally saying that citizenship could not be provided until my father's citizenship certificate was submitted; hence, even in the condition that I am a son of a Nepalese citizen and have completed the age required to obtain citizenship upon being born in Nepal; I have to become stateless and without citizenship.

It has been against the provision of Article 8 (2) of Part 2 of the Interim Constitution of Nepal, 2063 that if father or mother of a person was a citizen of Nepal at the time of his/her birth, such person shall be Nepalese Citizen by descent, and the provision of Clause 3 of Nepal Citizenship Act, 2063 that Nepalese citizenship shall be obtained by descent, as well

as against the Article 15 of Universal Declaration of Human Rights, 1948 and Article 24 of the International Covenant on Civic and Political Rights, 1966, Article 7 of Convention on the Rights of Children, including Article 9 of the Convention on Elimination of all forms of Discrimination Against Women, 1979; hence, order, command including mandamus, whichever is needed, should be issued to provide citizenship by mother's name so as to

interpret in connection to the victims across the country. Writ petition of Srijan Kharel, of the date of 2071/11/25 (March 9, 2015 A.D.), reads as above.

2. Submit affidavit within 15 days. Order of this Court of the date of 2071/11/27 (March 11, 2015 A.D.) on the name of the opponents reads as above.
3. There is no dispute in the matter that legal duty to be fulfilled by the body concerned is to be fulfilled when the petitioner demands the citizenship certificate along with necessary documents evidence by fulfilling the process prescribed by the Constitution and law before the authorized public body. There is not the

condition that the petitioner has been able to hold claim that discrimination has been made even from the legal provision. Hence, the writ petition filed upon making unrelated body an opponent on the issue, which has not been able to challenge any legal provision, and which is outside the legal duty of this Ministry, should be revoked. Affidavit of Mr. Bhesh Raj Sharma, Secretary of the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs on behalf of the same Ministry, of the date of 2071/12/17 (March 31, 2015 A.D.) reads as above.

4. Without being able to mention anything regarding what, what kinds of act, action or decision

of this Ministry has breached what, what kind of constitutional and legal rights of the petitioners, he has not been able to expose ground and reason to make this Ministry an opponent; hence, the writ petition should be revoked. Affidavit of Dr. Som Lal Subedi, Secretary of the Ministry of Federal Affairs and Local Development, of the date of 2071/12/23 (April 6, 2015 A.D.), reads as above.

5. The writ petitioners have not been able to expose what, what kinds of act, action or decision of the Office of the Prime Minister and the Council of Ministers has breached what, what kinds of the rights. This Office is not supposed to make this Office an opponent on the issue of providing citizenship. It cannot be said otherwise to the matter that the party to ask for the citizenship of Nepal shall have to furnish application to the body concerned by complying with the process and procedure determined in the Act and Rule. The lien on posts, who have legal duty, shall have to provide the recommendation for citizenship and the citizenship certificate by being under the existing law. Upon looking into regarding providing citizenship of Nepal by mother's name, on the writ petition having including Sabina Damai versus including the Government of Nepal (2067-WO-0703), directive order was issued on the name of the Ministry of Home Affairs on date 2067/11/15 (February 27, 2011 A.D.) by this Court to provide citizenship of Nepal to the petitioner by mother's name, to arrange necessary provisions circulating on the names of all the Chief District Officers to easily provide citizenship certificate by fulfilling the rule and procedure of Nepal Citizenship Act, 2063 and Rule of the same if the children born in Nepal from Nepalese citizen mother came to ask for the citizenship by mother's name, and

to move forward the necessary and effective steps to eradicate perverted customs, usage and traditions remained in the society; for the sake of its implementation, it was sent by writing to the Ministry of Home Affairs through the letter of the date of 2068/3/6 (June 20, 2011 A.D.); the letter for information that 3 points circulation was made to all the District Administration Offices through the letter of the date of 2068/5/5 (August 22, 2011 A.D) has been received; hence, it seems that the condition to issue the re-order regarding the same issue does not exist. From the affidavits of the body and lien on posts shall be clear in connection to other claim. Hence, from the aforementioned ground and reason as well, there is no condition to issue any order on the name of this Office as per the claim of the opponent petitioner; the writ petition should be revoked. Affidavit of Mr. Raju Man Singh, Secretary of the Office of the Prime Minister of the date of 2071/12/20 (April 3, 2015 A.D.) reads as above.

6. What was the difficulty for the writ petitioner to go to the District Administration Office by taking the recommendation of the body concerned upon going to the place having permanent residence when father's name, surname, address is known; nothing has been exposed towards this in the writ petition. The petitioners shall have to fulfill the liability to obtain the citizenship, and citizenship cannot be provided when necessary documents are not fulfilled and procedure is not adopted. Upon going to District Administration Office along with the documents to be submitted as determined by Act and Rule, by fulfilling the procedure prescribed, all the acts and actions shall be carried out from there; hence, writ petition furnished by making this Ministry an opponent should be revoked. Affidavit of Surya Prasad Silwal, Secretary of Ministry of Home Affairs of the date of 2071/11/12 (February 24, 2015 A.D.) reads as above.

Affidavit of District Administration Office, Babarmahal has not been submitted within the time limit.

7. In the present petition which was submitted today before the Bench upon being inducted to the daily and weekly cause list as per rule, learned advocate Mira Dhungana and advocate Sushma Gautam, present on behalf of the petitioners, pleaded that there was no dispute that the petitioner, Srijan Kharel, was the son of a citizen who had obtained Nepalese citizenship certificate. By having ill intention

for not making citizenship for the children by father's name, the father disappeared and had not come in contact; hence, as per the provision of Article 8 (2) (B) of the Interim Constitution of Nepal, 2063, Clause 3 (1) of Nepal Citizenship Act, 2063, the fact that this Srijan Kharel was a citizen of Nepal was clear. There was the provision that such person, who did not have the whereabouts of father, mother could obtain citizenship as per the process of Rule 3 (3) of Nepal Citizenship Rule, 2063. However, by fulfilling the aforementioned legal process, Srijan Kharel furnished application to the opponent, District Administration Office, to obtain citizenship by mother's name, but the opponent, Chief District Officer, gave oral order that citizenship could not be made without submitting father's citizenship; hence, this petitioner, Srijan Kharel, was compelled to live without citizenship and stateless condition, and was deprived of the legal right including constitutional right to obtain citizenship to be obtained as a citizen. The aforementioned act of the opponent was against including the international documents of which Nepal was a party as well as against the Interim Constitution of Nepal, Nepal Citizenship Act and Rule, 2063. Hence, necessary order should be issued on the names of the opponents so that it could be interpreted that citizenship should be provided for the petitioner Srijan Kharel and the victim like him.

8. Pleading was also heard, which was presented by learned deputy attorney, Mr. Sanjiv Regmi, present on behalf of the opponent, the Government of Nepal, stating that the Government of Nepal had not made any discrimination to the Nepalese citizens like the petitioner. For the substantive right to obtain citizenship claimed by the petitioner, some procedural processes should be fulfilled. It was said that citizenship would be provided when evidence documents including relationship verification deed of Bipin Kharel mentioned by the petitioners as their father; but, without submitting citizenship certificate exposing the nationality of the petitioners' father and evidence documents exposing relationship of being father of the petitioners; in the condition of not seeing who the father was. The writ petition furnished by saying that citizenship was not provided, deceiving the description should be revoked.
9. Upon hearing including the aforementioned pleadings, while considering towards the decision, is the order supposed to be issued in

the present case as per petition claim or not? It is seen that decision is to be made on this issue.

10. Upon considering towards the decision, in this, petitioner's pleading is seen to have maintained that the petitioner, Srijan Kharel, after he was born from the matrimonial relationship of Bipin Kharel, having home in Kailali district, Dhangadhi Municipality 3 and Sharmila Gautam, having home in K.D., Naikap Purano Bhanjyang V.D.C., Ward No. 7, the father, Bipin Kharel, was disappeared without giving information to the mother when he was still an infant; and since then there had been no information and contact; hence, after passing S.L.C. of the petitioner's elder sister, citizenship was needed; hence, stating that initiative should be taken upon searching out the father, Bipin Kharel, for the sake of making citizenship, mother, Sharmila Gautam, furnished application to the Police Administration, Kathmandu and while taking action upon that application, after going by making deed on the 19th (April 1) so as to attend on date 2068/12/20 (April 2, 2012 A.D.), the father did not attend on the 20th (April 2) at the Metropolitan Police Premises; but filing the case of injunction order at the Appellate Court, Patan against the mother, grandmother, Police Office and including District Administration Office, and getting order issued by the Appellate Court, Patan on the same case on date 2068/12/20 (April 2, 2012 A.D.) on the reverse, the father deliberately stayed out of contact with the purpose of not getting citizenship made by father's name; then, he was staying without contact since then; while furnishing application along with the recommendation of the V.D.C. as he, the petitioner, needed citizenship for the sake of achieving higher education, he was refused to be provided with citizenship orally saying that citizenship could not be provided without submitting father citizenship.
11. While looking into the documents evidence, replica copy attached to the petition, it is seen that the petitioner's mother, Sharmila Gautam, was born on 2033/9/25 (January 8, 1977 A.D.) in Kathmandu district, Naikap Purano Bhanjyang V.D.C., Ward No. 7, that citizenship certificate of C.C.No. 7610/10446 was issued by District Office, Kathmandu on her name on date 2068/6/30 (October 17, 2011 A.D.). Moreover, it is seen from the replica copy attached to the document file that in the case of having Bipin Kharel versus Sharmila Gautam and District Administration Office (Injunction case No. 2068-WO-0623), decision was made by Appellate Court, Patan on date 2068/12/20 (April 2, 2012 A.D.).
12. From birth registration certificate, it is seen that the petitioner, Srijan Kharel, was born on date 2054/5/23 (September 8, 1997 A.D.) at Maternity and Gynecology Hospital, Thapathali. Writ petition is seen to have been mentioned that upon fulfilling all the documents and legal process including the spot investigation deed done by the locals that after his father disappeared, and became out of contact by not coming to rented room, without information, he was staying at maternal uncle's home, and along with the recommendation of the Office of Purano Bhanjyang V.D.C., recommendation of Himshikhar Boarding School including the mother's citizenship certificate, after furnishing application to the Office of Naikap Purano Bhanjyang V.D.C. on date 2071/7/14 (October 31, 2014 A.D.) upon identifying by mother, carrying out spot investigation as per rule on date 2071/7/19 (November 5, 2014 A.D.) upon it, application was furnished to the District Administration Office, Kathmandu exposing the description of the aforementioned spot investigation. However, the opponent, District Administration Office, is seen to have not submitted affidavit on the issue of this application; hence, it could not be understood what the statement of the District Administration was.
13. Upon looking at our constitutional provision regarding the citizenship, in Section (B) of Sub-article 2 of Article 8 of Interim Constitution of Nepal, 2063, there is the provision that if "father or mother" of a person was a citizenship of Nepal at the time of his/her birth, such person shall be a citizen of Nepal. There is a similar type of provision in Sub-clause 2 (B) of Article 11. In Sub-clause (1) of Clause 3 of Citizenship Act, 2063, which was made to implement the provision relating to citizenship remained in the Constitution.
14. From the phrase "father or mother" used in the Constitution and Citizenship Act, it is seen that if any one of the father or mother is a Nepalese citizen, his/her children can obtain Nepalese citizenship certificate as soon as they are 16 years of age. The matter of obtaining citizenship by whose name of father or mother is the matter of a person's making choice. The condition is that this matter has been accepted by this Court. (N.L.M. 2066, D.No. 8175 P. 1014). Hence, it is not right by law to ask for the citizenship another also or to tell to go to an inconvenient place to obtain citizenship easily

even after the application has been furnished attaching the citizenship of any one of father or mother.

15. So far as the issue that the petitioner has said that father has been disappeared is concerned, it is not that petitioners shall not obtain citizenship simply because father has been disappeared. Upon looking into the relativity of the provision of Article 8 (3) of the Interim Constitution of Nepal, 2063 and Article 11 (4) of the Constitution of Nepal, it is seen that there is provision that even in connection to the person, who is found in Nepal whose father and mother's whereabouts are not known, he/she can obtain citizenship by descent; whereas, in Article 11 (5) of the Constitution of Nepal, it is seen that there is the provision that a person who is born in Nepal from a woman who is a citizen of Nepal and has been residing in Nepal and whose father has not been traced can obtain citizenship of Nepal by descent. It appears that after citizenship has been obtained by descent, if father is held to be a foreign citizen later, the citizenship of the person who has obtained citizenship by descent by mother's name, shall be converted into naturalized citizenship. Here is not the condition of the father not traced or father not identified. The petitioner has clearly mentioned his father's name and address. Statement of the petitioners is that the father, Bipin Kharel, has been out of contact upon being disappeared, leaving room without saying anything. For the affidavit, it is not seen that this is not the matter. In the fact section of the decision on the petition of injunction (2068-WO-623) having the petitioner, Bipin Kharel versus the opponent Sharmila Gautam, decided by Appellate Court, Patan on date 2068/12/20 (April 2, 2012 A.D.), attached to the document file, it is seen that the petitioner has accepted that upon getting married to Sharmila Gautam, one son and one daughter, have been born. From this, it is seen that there is not much dispute on the identity of the petitioner's father or relationship with him. Here, the matter is raised here that District Administration Office has oral reply that citizenship would be provided only after the evidence of the father's citizenship is submitted to obtain citizenship by descent. As a main thing, when the provision is made in the Constitution and Act citizenship can be obtained by the name of any one of father or mother, application can be furnished attaching to it the mother's citizenship. In such a situation, it is not right to refuse to provide citizenship certificate by

posing hurdle that petitioner could not submit the father's certificate.

16. From the birth registration certificate, it is seen that the petitioner, Srijan Kharel, was born on date 2054/5/23 (September 8, 1997 A.D.) at Paropakar Maternity and Gynecology Hospital, Thapathali. It is seen from the S.L.C. certificate of the School that he is over 16 years of age. There is no dispute that upon being a Nepalese citizen by descent, the petitioner's father was born on 2033/9/25 (January 8, 1977 A.D.) in Kathmandu district, Naikap Purano Bhanjyang, Ward No. 7 and citizenship certificate of C.C.No. 7610/10446 was issued by District Administration Office, Kathmandu on date 2068/6/30 (October 17, 2011 A.D.) on her name, and that the petitioner is found to have obtained recommendation also as per prescribed in Nepal Citizenship Act, 2063 and Rule of the same; hence, it is seen that there is no reason again to refuse to provide citizenship.
17. Citizenship certificate identifies a person as a citizen of a particular country. Without becoming a citizen, political rights cannot be used. Citizenship certificate is very essential to use political and economic rights and to identify as a citizen. State provides its citizens various fundamental rights such as using fundamental rights, obtaining employment, taking up public post, using political rights, to obtain social security and casting vote etc. Political right is not obtained by the person other than a citizen. Citizenship is a very sensitive issue linked with the personal identity of a person; hence, if substantially seen as a citizen, it is not just to trouble by putting tiny hurdle.
18. Provision is made in Article 18 of the Constitution of Nepal regarding right to equality. The right of Article 18 is a fundamental right to be obtained by all the citizens without discrimination. It is guaranteed in Article 18 (1) that all the citizens shall be equal before law and that nobody shall be denied the equal protection of law. The matter that nobody shall be treated with gender-based discrimination has been made mentioned in Article 18 (2). In addition to this, provision has been made in Sub-article (1) of Article 38 that every woman shall have equal lineage right without discrimination. Successor of the lineage and equal right of identity shall also fall within the equal lineage right. Though present petition was filed when the Interim Constitution was prevailing, here seems no ground and reason

that the petitioners shall not obtain the rights guaranteed by the new Constitution or the Constitution of Nepal.

19. Though, from her citizenship certificate of Nepal, it is justified that Sharmila Gautam, the petitioners' mother, is a citizen of Nepal; by not issuing citizenship certificate for the petitioner showing that his father has been disappeared and he has not submitted the father's citizenship certificate, here appears a condition that the fundamental rights of not just the petitioner but his mother, Sharmila Gautam, are also affected. It is not seen that opponents' view has not pointed towards the matter that such act of discrimination meted out upon the women based on gender kidnaps the right to equality of the women.
20. In the writ petition having including Sabina Damai versus the Government of Nepal (Writ No. 2067-WO-0703 N.L.M. 2068 D.No. 8557 Number 2 P. 247), mandamus is seen to have been issued by this Court on the name of District Administration Office to provide citizenship by mother's name as well. After that, from the affidavit of the Office of the Prime Minister and the Council of Ministers, it is seen that it was circulated from the Office of the Prime Minister and the Council of Ministers to Ministry of Home Affairs on date 2068/6/6 (September 23, 2011 A.D.) and from Ministry of Home Affairs to all District Administration Offices and the bodies concerned through the letter of the date of 2068/5/5 (August 22, 2011 A.D) for the sake of implementation of that order. Similarly, in the writ petition having including Bhola Nagarkoti versus the Government of Nepal (Writ No. 2069-WO-0880) also, it was issued by this Court that citizenship should be provided by mother's name as well. The decision made on the petition of Ranjita Thapa has been mentioned above. Thus, it is also seen that the matter that citizenship can be obtained by the name of Nepalese citizen mother has already been established. Since the petitioner's claim is that citizenship should be obtained by mother's name, the

matter where the father has gone or what has happened is seen as irrelevant. Though there is provision that citizenship can be obtained by mother's name, to deprive the petitioner of the citizenship is considered as an act done against the law. The official having legal right shall have to fulfill his/her duty. Not to do so appears not just against equality but also contrary to equity. It seems essential to look into this subject matter by the opponent Office itself by being sensitive since the petitioner has said that he has furnished application to District Administration Office, Kathmandu.

21. Hence, from the aforementioned ground and reason, in the present petition, the matter that Sharmila Gautam, the petitioner's mother, Srijan Kharel, is a Nepalese citizen is also justified, and the petitioner, Srijan Kharel, is seen to have been born in Nepal from Nepalese citizen mother; hence, it is decided that mandamus order shall be issued on the name of District Administration Office, Kathmandu not to refuse to provide citizenship by mother's name if the petitioner furnishes application by submitting mother's citizenship, attaching with it the evidence as far as available. It has been exposed that circulation has been made to all the District Administration Offices as per the decision made by this Court on the writ petition of aforementioned Sabina Damai on the issue that citizenship can be obtained by mother's name; hence, it seems that re-order is not supposed to be issued on the names of all the District Administration Offices. Provide information of the order, and submit the document file to the record section, striking off the record of the case file.

Justice

I am with the said opinion.

Justice

Bench Officer: Mankumari G.M. B.K (Under-Secretary)

Done on: 2073/05/13/01 (Monday, 29th August, 2016)

Bhadra 13, 2073 (29th August, 2016)

Supreme Court

Division Bench

Hon. Justice Mr. Gopal Parajuli

Hon. Justice Mr. Bishwambhar Prasad Shrestha

Decision

069-WO-1090

Subject: Mandamus

Ms. Puja Subedi (Uprety), resident of Kathmandu Metropolitan City, Ward No. 34, Kathmandu district.....	1	
Mr. Rojan Uprety, resident of Kathmandu Metropolitan City, Ward No. 34, Kathmandu district	1	Petitioner
Vs.		
Government of Nepal, Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu	1	
Government of Nepal, Ministry of Home Affairs, Singha Durbar, Kathmandu	1	
Government of Nepal, Ministry of Federal Affairs and Local Development, Singha Durbar, Kathmandu	1	
Government of Nepal, Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, Singha Durbar, Kathmandu	1	Respondent
Government of Nepal, Ministry of Women, Children and Social Welfare, Singha Durbar, Kathmandu	1	
District Administration Office, Kathmandu (Babar Mahal)	1	
Office of Kathmandu Metropolitan City, Ward No. 34 of Kathmandu district	1	
Nepal Government District Administration Office, Babarmahal Kathmandu	1	

The brief facts of this case duly under the jurisdiction of this Court pursuant to Articles 32 and 107(2) of the Interim Constitution of Nepal, 2007 are as follows:

One of the petitioners, I, Puja Subedi (Uprety) got married with Prakash Uprety said to be hailing from Dhading out of love, and a son named Rojan Uprety was born from the cohabitation on 28.08.1995 at our house situated in Kathmandu Metropolitan City, Ward No. 34, Kathmandu district.

After my pregnancy and before delivery, my husband Prakash Uprety went outside Kathmandu for work but never returned. I tried to search for his whereabouts as he previously told in Dhading but could not locate anything. Now, my son had passed SLC and as he was to study at higher secondary

level, the concerned school sought birth registration certificate and citizenship certificate for admission. As such, I applied for my son's birth registration certificate at the Office of Kathmandu Metropolitan City, Ward No. 34. On 27.11.2012, the Ward Office registered the birth of my son. The higher secondary school where my son is studying has also sought his citizenship certificate. Hence, I filed for obtaining recommendation before the Office of Kathmandu Metropolitan City, Ward No. 34 by attaching an application and duly filling the form as per Schedule-1 on 23.03.2013. But the Office declined to provide a recommendation. Then, I approached District Administration Office, Kathmandu on 24.03.2013 together with the birth registration, mark sheets and certificates of my son. However, on the

same day, I was given an oral order that since lineage refers to father, without his presence, no citizenship certificate can be provided to the offspring. They refused to register my application altogether. As the School is threatening to expel my son in the absence of a citizenship certificate, I have filed this writ petition so that my son is not deprived of the right to education.

My mother Puja Subedi (Uprety) has been providing me with nurture, education and healthcare to I, Rojan Uprety, one of the petitioners. My mother herself has been toiling for bringing me up, attending me and taking charge of my education and well being. Hence, I want to assume the identity from the name of my mother. The basic framework for the citizenship laws is Part 2 of the Interim Constitution of Nepal, 2007. Article 8(2)(b) of that Part provides that: In case either father or mother is a Nepali citizen at the time of birth of his or her offspring, then such offspring shall be a citizen of Nepal by descent. Moreover, Section 3(1) of the Nepal Citizenship Act, 2007 also resembles the constitutional provision. Thus, the Constitution and laws have expressly stipulated that: In case either father or mother is a Nepali citizen at the time of birth of his or her offspring, then such offspring shall be a citizen of Nepal by descent. However, I, Rojan Uprety, one of the petitioners have been the victim of grave injustice as I have been denied of a citizenship certificate since my father's whereabouts are not known. The oral order of respondents has caused to obliterate my own self.

Rule 3(1) of the Citizenship Rules, 2007 lays down that: A Nepali citizen having completed 16 years of age and desirous of obtaining a Nepali citizenship certificate by descent, shall have to file an application before the concerned Chief District Officer by attaching the citizenship certificates of his or her father, mother or other close kith and kin within 3 generations, and a recommendation of local body disclosing the place of birth and relation or a copy of birth registration certificate, accompanied by the verification of his or her mother. Then, such citizenship certificate shall be issued to him or her. Thus, contrary to the above constitutional and legal provision, and being guided by patriarchal norms and values, the denial of recommendation by the Office of Kathmandu Metropolitan City, Ward No. 34, as well as the oral order of District Administration Office, Kathmandu, amount to the infringement of rights of us the petitioner mother and son, to acquire and to transfer citizenship for the offspring, in contravention of the constitutional and legal provisions as well as the stipulations of international treaties and conventions.

Article 15 of the Universal Declaration of Human Rights, 1948 guarantees the right to citizenship

for every person. It prevents arbitrary denial of citizenship right against any individual. Article 24 of the International Covenant on Civil and Political Rights, 1966 further prescribes that: *Every child shall be registered immediately after birth and shall have a name. Every child shall have the right to acquire a nationality.* Similarly, Article 9(2) of the Convention for the Elimination of All Forms of Discrimination against Women, 1979 lays down that: *State parties shall grant women equal rights with respect to the nationality of their children.* Our Constitution and laws also have followed suit. However, here is a case of injustice meted out when the State authorities arbitrarily define descent and deprive a person from the right of acquiring citizenship as well as identity. Article 7 of the Convention on Rights of Child, 1989 also stipulates that: *The child should be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his/her parents.*

The provisions of international treaties and conventions above have ascertained the right to transfer citizenship among the men and women on an equal footing. Moreover, our Constitution and laws also have conferred on the mother the right of transferring citizenship to her offspring. However, the respondents have tried to make us, the petitioner mother and son, without identity, by depriving the mother of a right to transfer her citizenship to her offspring and the son, a Stateless individual by declining to provide his citizenship certificate.

Articles 8(2) (b), 10, 12(1), (2) (3), and 20 (1) (3) of the Interim Constitution of Nepal, 2007; Articles 1, 9, 9(2) and 15 (1) (4) of the Convention for the Elimination of All Forms of Discrimination against Women, 1979; Articles 16, 24(4) and 26 of the International Covenant on Civil and Political Rights, 1966; Article 15 of the Universal Declaration of Human Rights, 1948; Article 1 of the Convention for the Reduction of Statelessness, 1961; as well as Section 3(1) of the Nepal Citizenship Act, 2007, have been flouted in this process.

I, Puja, one of the petitioners have been safeguarding my son Rojan Uprety as a single mother and as my husband could not be retraced once he left Kathmandu. As such, pursuant to Article 8(2) (b) of the Interim Constitution of Nepal, 2007, Section 3(1) of the Nepal Citizenship Act, 2007, Rule 3(1) of the Citizenship Rules, 2007 and 2.1.2 of the 2nd Chapter of the Procedural Guidelines for the Distribution of Citizenship Certificates, there are explicit provisions that a mother can well assign citizenship and identity to her offspring. As such, I pray to the Court that mandamus and any other relevant order be issued in the name of respondents

directing them to grant me, the petitioner Rojan Uprety, a citizenship certificate by descent in the name of my mother Puja Subedi (Uprety) as per the constitutional and legal provisions, and since she had given birth to me, brought me up, and provided for my education and healthcare.

The plea in the writ petition also read that: As thousands of Nepali people have been suffering from lack of citizenship across Nepal, a mandamus order be issued in so as to interpret their plight also and let the order be distributed as circular for implementation to the entire offices of Village Development Committees, Metropolitan City, Sub-Metropolitan cities, municipalities and their relevant ward offices, via the Ministry of Federal Affairs and Local Development; and to the all 75 District Administration Offices via the Ministry of Home Affairs.

The order of this Court on 26.04.2013 read that: What has happened in this connection? Why an order as sought by the petitioner need not be issued? Let the respondents be served with a notice, that in case there is any reason for not issuing such order, let it be attached together and a written reply be submitted to this Court within 15 days excluding the time for travel. Let the case be duly submitted before the Bench once the written replies are received or if the deadline expires. And considering the sensitivity and gravity of the matters raised in this writ petition, and as it seems to require speedy disposal, this case has been granted a priority hearing as per Rule 63(3) (f5) of the Supreme Court Rules, 1992.

The written reply furnished by Ministry of Federal Affairs and Local Development of the Government of Nepal read that: The writ petitioners have failed to mention which act or decision of this Ministry had violated which of the constitutional and statutory rights of the petitioners. They seem to have made this Ministry a respondent without any sound reason or basis. As such, this act of petitioners seems to be *prima facie* revocable in the case of this Ministry. Hence, it is prayed that the writ petition be set aside.

The written reply furnished by Office of the Prime Minister and Council of Ministers Government of Nepal read that: In the case of issuance of citizenship certificate in the name of mother, in a writ petition involving Sabina Damai et al. as the petitioner (Writ petition no. 0703 of the year 2067 BS), the Supreme Court of Nepal had issued a directive order on 27.02.2011 in the name of Ministry of Home Affairs which provided that: *Let the petitioner be granted a Nepali citizenship in the name of her mother, in case children born from Nepali mothers on Nepali soil seek to obtain citizenship in their mothers' names, then let them duly be provided with the citizenship certificate in an effortless manner by following the*

procedures of Nepal Citizenship Act, 2007 and Rules thereof. Let this matter be communicated to the entire Chief District Officers as a circular and make the needful provisions. As such, a 3 point circular has been made to the entire District Administration Offices via a letter of Ministry of Home Affairs and being so, there is no need to issue a fresh order on the same topic. Thus, the writ petition needs to be quashed.

The written reply furnished by Ministry of Home Affairs read that: It is an inherent right of all Nepali people to acquire citizenship as per the laws and a circular was also made by this Ministry on 22.08.2011 to its subordinate offices for issuing citizenship certificates in the names of mothers by fulfilling all of the processes laid down by the Act and Rules. Thus, the claim that citizenship certificate in the name of mother was denied is fake. Since this Ministry did nothing to violate the fundamental rights of the petitioner, let the writ petition be set aside in case of this Ministry.

The written reply furnished by District Administration Office, Kathmandu read that: The prevailing laws on citizenship provide that citizenship may be awarded only when the name of father is mentioned. Hence, if and when the petitioner applies at this Office, by fulfilling the requirements of existing law, then citizenship certificate shall be duly granted. As such, it is prayed that the writ petition be scrapped.

The written reply furnished by Ministry of Women, Children and Social Welfare of the Government of Nepal read that: The task of distributing citizenship does not fall within the purview of this Ministry. The petitioners have made this Ministry a respondent for an act which it did not perform. As such, let this claim be repudiated.

The written reply furnished by Secretary Kumari Rai on behalf of Kathmandu Metropolitan City, Ward No. 24 read that: On the basis of Constitution, law and precedents, this Office has never declined to provide a recommendation and the petitioner without even filing an application at this Office, and without assigning a clear basis and reason to that effect, had filed a writ petition which should be quashed in case of this Office.

The papers enclosed in the case file were studied with respect to this case duly submitted before the Bench by ascending through the daily cause list.

Learned advocate Tika Ram Bhattarai representing the respondent Metropolitan City argued that: In the case of issuance of citizenship certificate in the name of mother, in a writ petition involving Sabina Damai et al. as the petitioner (Writ petition no. 0703 of the year 2067 BS), the Supreme Court of Nepal had issued a directive order on 27.02.2011 in the name of Ministry of Home Affairs which

provided that: *Let the petitioner be granted a Nepali citizenship in the name of her mother, in case children born from Nepali mothers on Nepali soil seek to obtain citizenship in their mothers' names, then let them duly be provided with the citizenship certificate in an effortless manner by following the procedures of Nepal Citizenship Act, 2007 and Rules thereof. Let this matter be communicated to the entire Chief District Officers as a circular and make the needful provisions.* As such, all District Administration Offices have been issued a circular for the implementation of that order. As the issue of acquiring citizenship in the name of mother has already been settled in that case involving similar question and facts, it would not be reasonable to issue orders repeatedly over the same matter. Hence, the writ petition should be set aside.

The plea raised in the writ petition details that: One of the petitioners, I, Puja Subedi (Uprety) got married with Prakash Uprety said to be hailing from Dhading out of love and a son named Rojan Uprety was born from the cohabitation on 28.08.1995 at our house situated on Kathmandu Metropolitan City, Ward No. 34, Kathmandu district.

After my pregnancy and before delivery, my husband Prakash Uprety went outside Kathmandu for work but never returned. I tried to search for his whereabouts as he previously told in Dhading but could not locate anything. Now, my son had passed SLC and as he was to study at higher secondary level, the concerned school sought birth registration certificate and citizenship certificate for admission. As such, I applied for my son's birth registration certificate at the Office of Kathmandu Metropolitan City, Ward No. 34. On 27.11.2012, the Ward Office registered the birth of my son. The higher secondary school where my son is studying has also sought his citizenship certificate. Hence, I filed for recommendation before the Office of Kathmandu Metropolitan City, Ward No. 34 by attaching an application and duly filling the form as per Schedule-1 on 23.03.2013. But the Office declined to provide a recommendation. Then, I approached District Administration Office, Kathmandu on 24.03.2013 together with the birth registration, mark sheets and certificates of my son. However, on the same day, I was given an oral order that since lineage refers to father, without his presence, no citizenship certificate can be provided to the offspring. They refused to register my application altogether.

Further the writ petition raises another plea that: Pursuant to Article 8(2) (b) of the Interim Constitution of Nepal, 2007, Section 3(1) of the Nepal Citizenship Act, 2007, Rule 3(1) of the Citizenship Rules, 2007 and 2.1.2 of the 2nd Chapter of the Procedural Guidelines for the Distribution of

Citizenship Certificates, there are explicit provisions that a mother can well assign citizenship and identity to her offspring. As such, I pray to the Court that mandamus and any other relevant order be issued in the name of respondents directing them to grant me, the petitioner Rojan Uprety, a citizenship certificate by descent in the name of my mother Puja Subedi (Uprety) as per the constitutional and legal provisions, and since she had given birth to me, brought me up, and provided for my education and healthcare.

Upon examining the written reply filed by District Administration Office, Kathmandu et al, it has stated that the prevailing laws on citizenship provide that citizenship may be awarded only when the name of father is mentioned. Hence, if and when the petitioner applies at this Office, by fulfilling the requirements of existing law, then citizenship certificate shall be duly granted. Thus, it is well established that the Office denied issuing citizenship in the name of mother as sought by the petitioners, from the content of its written reply itself.

The petition raises a pertinent issue that though the Constitution and laws have expressly provided that in case father or mother of a child are Nepali citizens, then the child is entitled to a Nepali citizen by descent, one of the petitioners Rojan Uprety was deprived of the right to acquire a citizenship certificate only on the basis that his father could not be traced. While looking at the birth registration certificate of petitioner, it bears the details of him being the grandson of Pramod Uprety, son of Puja Subedi (Uprety), born on 28.08.1995, resident of Kathmandu, citizenship certificate No. 3610/058, Kathmandu of his mother and the citizenship certificate no. of his father could not be produced. From the above facts, though the names of grandfathers are mentioned, the verified address and citizenship no. of his father are not stated. Though the papers like birth registration certificate enclosed in the case file shows that his mother is a Nepali citizen in fact.

In both of his SLC mark-sheet and character certificate, the petitioner has his name as Rojan Uprety and the surname of his father is written as "Uprety". Moreover, his father's name is written as Prakash Uprety in his character certificate. Though the father had no role in registering the birth of petitioner by disclosing the name of his grandfather, yet the details submitted by his mother also will have evidentiary value until proved otherwise.

Article 11(2) of the Constitution of Nepal provides that: At the commencement of this Constitution, the following persons who have their permanent domicile in Nepal shall be deemed to be the citizens

of Nepal by descent:

- (a) any person who has acquired citizenship by descent prior to the commencement of this Constitution;
- (b) any person whose father or mother was a citizen of Nepal at his or her birth.

Section 3(1) of the Nepal Citizenship Act, 2007 stipulates that: In case either father or mother is a Nepali citizen at the time of birth of his or her offspring, then such offspring shall be a citizen of Nepal by descent. Similarly, Rule 3(1) of the Nepal Citizenship Rules, 2007 lays down the procedure for acquiring Nepali citizenship certificate by descent. It reads that: A Nepali citizen having completed 16 years of age and desirous of acquiring Nepali citizenship certificate by descent, shall have to apply before the concerned Chief District Officer pursuant to the format of Schedule-1, by attaching the following documents:

- a) Nepali citizenship certificates of father or mother or any other close relative within 3 generations;
- b) A recommendation made by the concerned local body which would reveal the birth place and relation or birth registration certificate;
- c) In case of submission of citizenship certificates of close relatives within 3 generations, then a certified letter revealing the relation with that relative.

Having Rule 3(1) of the Nepal Citizenship Rules, 2007 provided for such an a procedure to acquire Nepali citizenship certificate by descent, here in this case, the Nepali citizenship certificate of mother duly verified by her, the academic certificates of petitioner Rojan and his birth registration certificate also seem to have been produced. Thus, from the constitutional and legal provisions above and the documents enclosed in case file, the petitioner Rojan Uprety prima facie appears to be a Nepali citizen.

In the application seeking Nepali citizenship certificate of Rojan Uprety, the address of mother and name of the father have been disclosed. This Court has enunciated a precedent in the case of Petitioner Ranjit Thapa et al. vs. Office of the Prime Minister and Council of Ministers, Government of Nepal (065-WO-0035) which stipulated that: *Though the addresses of his mother and father are separate, an order of mandamus is hereby issued in the name of respondents to grant citizenship certificate to him from any one address out of his mother's or father's address of his choice in case he files with the recommendation of concerned body and fulfills the prescribed procedure. From the above precedent, an applicant is entitled to acquire citizenship certificate*

from any of the one address of his father or mother of his or her choice. However, in the present case, the issue is only of a father being not found. Though there is a situation here of not being able to disclose the address of father due to his disappearance, as the name of applicant's mother is clearly provided, it would be equally lawful to issue citizenship certificate in the name of that mother as well.

From the study of above constitutional and legal arrangements, it is seen that women are granted equal rights on par with men. Further, this has enunciated a precedent in the case of Petitioner Sabina Damai et al. vs. Office of the Prime Minister and Council of Ministers, Government of Nepal (Case: mandamus et al. Decision No. 8557) which stipulated that: *No one should be denied of citizenship due to the ignorance of prescribed official towards Constitution, laws and covenants pertaining to human rights neither through their flawed interpretation. Experiencing hardships in obtaining citizenship certificate cannot be tolerated; and that one can still attain Nepali citizenship certificate if one between his/her father and mother is a Nepali citizen.*

The Constitution, laws and the precedents enunciated all have legally permitted for acquiring citizenship certificate by descent in case his or her father or mother is a Nepali citizen, and for the offspring, either of father or mother is an equal basis for lineage. At this context, when a father's whereabouts are not known, depriving someone from citizenship only because the name of father was written by mother or that she tried to write the address of father known to her, cannot be held as plausible.

From the photocopy of the application, it is seen that the petitioner for attaining Nepali citizenship had indeed cited his father's name and tried to acquire citizenship from the mother's address of Kathmandu Metropolitan City, Ward No. 34. He also had filed an application before the Chief District Officer of District Administration Office, Kathmandu as per the format specified in Schedule-1 of the Nepal Citizenship Rules, 2007. In case he could not have been issued a citizenship certificate, then the Office is supposed to make a decision for addressing the application or to make further inquiries as required pursuant to the law and reach a conclusion. However, as no such order or decision is known of, it seems that the issue of whether to award citizenship to the petitioner or not, itself has remained in the dark.

Moreover, the respondent District Administration Office, Kathmandu was also expected to negate the writ plea through its written reply by revealing the factual or legal bases for denying the petitioner

his citizenship. But, the Office simply and grossly replied that citizenship can be granted only if the father's name is marked on the application. This way, it is learnt that the Office failed to give sufficient attention to the content of application duly filed as per the format of Schedule-1. On the other hand, the respondent District Administration Office, Kathmandu, instead of simplifying and aiding the right of citizens to obtain citizenship pursuant to the Constitution, laws and the precedents enunciated, had failed or desired against even to enter into the merit of application and as such has trampled on discharging the lawful obligations of a public authority on whether a citizenship certificate should be issued or not.

The act of statutorily authorized agency or official denying someone of citizenship in the absence of any plausible reason and basis cannot be deemed as legitimate and proper. It is rather supposed to explore ways for assistance and simplification in granting citizens with citizenship as per the legal provisions. Instead, making delay on deciding whether or not to provide someone citizenship or not without a reasoned decision cannot be held as a proper course of law.

Hence, an order of mandamus is hereby issued in the names of respondents District Administration Office, Kathmandu and Office of Kathmandu

Metropolitan City, Ward No. 34 to examine the matters required as per Nepal Citizenship Act, 2007 and Nepal Citizenship Rules, 2007 at the earliest and in case the petitioner applies for acquiring citizenship by disclosing the name of his father and address of mother, and if the mother attests to the same at the office, then let the needful matters be inquired and let a decision on awarding citizenship be made forthwith by not depriving the petitioner Rojan from Nepali citizenship certificate just on the basis that he intended to write the name of father and address of mother as recorded on his birth registration certificate and academic certificate. Let this order be communicated to the respondents via the Office of Attorney General. Let the record of this writ be written off the registry and the case file be duly handed over.

Sd/-

(Justice)

I concur with the aforementioned opinion.

Sd/-

(Justice)

Bench Officer: Harka Bahadur Chhetri

Computer Operator: Mandira Ranabhat

[Done on Thursday, 29.08.2016]



Bhadra 13, 2073 (29th August, 2016)

Supreme Court

Division Bench

Honorable Justice Dr. Aananda Mohan Bhattarai

Honorable Justice Prakashman Singh Raut

Order

071-WO-0710

Subject: Mandamus et al

Surendra Poudel, a resident of ward No 12 of Kathmandu Metropolis of Kathmandu district.....	1	
Rusha Poudel, a resident of ward No 12 of Kathmandu Metropolis of Kathmandu district	1	
Sujan Poudel, a resident of ward No 12 of Kathmandu Metropolis of Kathmandu district	1	<u>Applicant</u>
		<u>Plaintiff</u>
Vs.		
Nepal Government, Office of Prime Minister and Council of Ministers, Singhadurbar Kathmandu	1	
Nepal Government Ministry of Home, Singhadurbar, Kathmandu	1	
Nepal Government Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs	1	
Nepal Government, District Administration Office, Babarmahal Kathmandu	1	
Nepal Government Ministry of Federal Affairs and Local Development Singhadurbar, Kathmandu	1	
Office of Kathmandu Metropolis	1	
Office of ward No 12 of Kathmandu Metropolis of Kathmandu district	1	
Ward Secretary, Office of ward No 12 of Kathmandu Metropolis of Kathmandu district ...	1	<u>Defendant</u>
		<u>Respondent</u>

Brief fact and order of the present writ petition that has been submitted by being fallen under the jurisdiction of this Court as per Article 107 (2) of the Interim Constitution of Nepal, 2063 are as follows:

1. We, the petitioners, Surendra Paudel, Rusha Paudel and Sujan Paudel, are the victims of being deprived of Nepalese citizenship. We are the children of Ganesh Bahadur Paudel, and Usha Chhetri, living on rent at K.D., K.M.C., Ward No. 12, Teku, having Bhojpur district as permanent address. In the course of operating business upon coming to Kathmandu from

Bhojpur, our, petitioner's father married our mother, Usha Chhetri, on date 2044/11/3 (Febraury 15, 1988 A.D.), and among us petitioners, Surendra Paudel was born on 2045/9/19 (January 2, 1989 A.D.), Rusha Paudel on 2048/10/2 (January 16, 1992 A.D.) and Sujan Paudel on 2051/8/2 (November 18, 1994 A.D.) at Maternity and Gynecology Hospital, Thapathali, Kathmandu. We are of the age of 25, 22, 20 years. Saying that he would go the permanent home, Bhojpur, father went away when we, the petitioners, were still infants, and

has not returned since. Even after marriage, he never took mother and us our home. We still do not know and have no information where father is. In the hope of father's return, we are over the age, which is required to obtain citizenship. We are living at maternal uncle's home. Our parents are Nepalese citizens. With identification of the mother, in order to make citizenship in the address of maternal uncle's home address, when we went to the Office of Ward No. 12 of Kathmandu Metropolitan City to take recommendation along with the application as per Sub-rule 1 of Rule 3 of Citizenship Rule, 2063 and as per Schedule 1 of the same Rule, we were refused to be provided with recommendation for citizenship, saying that our citizenship could not be made from there, that we had to obtain citizenship from the address of our father, that without father's coming, citizenship could not be made by mother's name, and that there was now no law to provide citizenship by mother's name. In the condition that we were born in Nepal from a Nepalese citizen mother, we have been stateless due to being deprived of obtaining citizenship, and are compelled to be deprived of human rights including the right of identity and right of nationality and right to equality, and it has been against the provision of Article 8 (2) of Part 2 of the Interim Constitution of Nepal, 2063 that if father or mother of a person was a citizen of Nepal at the time of his/her birth, he/she shall be a citizen of Nepal by descent, and the provision in Article 11 (2) (B) of present Constitution of Nepal, 2072 and the provision of obtaining Nepalese citizenship by descent in Clause 3 of Nepal Citizenship Act, 2063; moreover, it has been opposite to the Article 15 of Universal Declaration on Human Rights, 1948, Article 24 of International Covenant on Civic and Political Right, 1966, Article 7 of Convention on the Right of the Children, including Article 9 of Convention on Elimination of all Forms of Discrimination against women; hence, order, command including mandamus, whichever is needed, should be issued to provide citizenship by mother's name as per law so as to interpret it in connection to the victims across the country like us. Joint writ petition of Surendra Paudel, Rusha Paudel and Sujana Paudel, of the date of 2071/11/25 (March 9, 2015 A.D.), reads as above.

2. Submit affidavit within 15 days as well as provide first priority. Order of this Court on the names of the opponents, on date 2071/11/27 (March 11, 2015 A.D.), reads as above.
3. If application is furnished for the sake of recommendation before authorized body

along with necessary document evidence upon fulfilling the process as per law, such body shall have to fulfill its legal duty. From the present petition filed by making unrelated body an opponent, on the issue outside the legal duty of this Ministry, there is the condition that no order is supposed be issued; hence, writ petition should be revoked. Affidavit of Mr. Bhesha Raj Sharma, Secretary of Ministry of Law, of the date of 2071/12/17 (March 31, 2015 A.D.), reads as above.

4. Without exposing what, what kinds of act, action or decision of the Office of the Prime Minister and the Council of Ministers has breached what kinds of constitutional and legal rights of the opponent writ petitioners, this Office is not supposed to be made an opponent. The party who asks for citizenship certificate shall have to furnish application with rule to the body concerned by complying with the process and procedure determined in the Act and law of citizenship. Lien on posts, who have legal duty, shall have to provide recommendation of citizenship and citizenship certificate by being under the prevailing law. Upon seeing regarding providing citizenship by mother's name, in the writ petition of 2067-WO-0703, having including Sabina Damai versus the Government of Nepal, directive order has been issued on the date of 2067/11/15 (February 27, 2011 A.D.) on the name of Ministry of Home Affairs to provide the citizenship of Nepal to the petitioner by mother's name as per law, to arrange necessary provisions by circulating nationwide on the names of all the Chief District Officers to provide certificate of Nepal Citizenship Act, 2063 and Rule of the same if the children, who were born in Nepal from a Nepalese citizen mother, come to ask for citizenship by mother's name, and to move necessary effective step to eradicate the perverted tradition and custom remaining in the society, for the sake of its implementation, and letter for the information that it was sent, by writing to the Ministry of Home Affairs through the letter of this Office of the date of 2068/3/6 (June 20, 2011 A.D.) and through the letter of the Ministry of Home Affairs of the date of 2068/5/5 (August 22, 2011 A.D) to all District Administration Offices, 3 point circulation was made has also been received; hence, condition does not appear to have been existing to issue the re-order by the Court in the context of the same issue. In connection to the other claim of the petition, it shall be clear from the affidavits of the body and lien on posts concerned. Hence, from the aforementioned ground as well as the reason

also, there is no condition to issue any order on the name of this Office as per the claim of the opponent petitioner. Hence, the writ petition should be revoked. Affidavit of Mr. Raju man Singh Malla, Secretary of the Office of the Prime Minister, of the date of 2071/12/20 (April 3, 2015 A.D.), reads as above.

5. Without mentioning anything regarding what, what kinds of act, action or decision of this Ministry has breached what kinds of constitutional and legal rights of the petitioners, the writ petitioners are not found to have been able to expose any reason and ground to make this Ministry an opponent; hence the writ petition should be revoked. Affidavit of Mr. Dr. Som Lal Subedi, Secretary of the Ministry of the Federal Affairs and Local Development, of the date of 2071/12/23 (April 6, 2015 A.D.), reads as above.
6. No application of the petitioners has arrived to be registered at this Office to obtain recommendation for the citizenship and nobody has ever provided information to the petitioner that it could not be registered and that recommendation could not be provided; hence, the writ petition that has been registered upon hiding the fact should be revoked; in the Interim Constitution of Nepal, 2063 and Citizenship Rule, grounds and processes have been clearly determined and in the case, having Sabina Damai versus the Government of Nepal, this Court has interpreted that citizenship could be provided by the mother's name, too; hence, on the ground of aforementioned constitutional and legal and precedent doctrines, since this Office is making recommendation for citizenship, this Office shall never refuse to provide recommendation as per prevailing law on the ground of the application brought by petitioner upon fulfilling rule; hence, the writ petition should be revoked in connection to this Office. Affidavit of Mr. Satya Dev Pandit, Administrative Chief of the Office Ward No. 12 of Kathmandu Metropolitan City, of the date of 2071/12/26 (April 9, 2015 A.D.), reads as above.
7. What, which cause has posed difficulty to the writ petitioners in going to the District Administration Office upon taking along the recommendation of the local body concerned upon going to the place of permanent domicile when father's name, surname, address is known; nothing is exposed in the writ petition towards this. The liability to obtain citizenship vested on the petitioners, and citizenship cannot be provided when necessary documents are not fulfilled and procedure is not adopted to obtain citizenship. If gone to District Administration

Office along with the documents to be submitted by fulfilling the procedure prescribed as determined by the Act and Rule, all the acts and actions are carried out from there; hence, it is not seen necessary for the petitioners to make this Ministry an opponent; hence, the writ petition should be revoked. Affidavit of Mr. Surya Prasad Silwal, Secretary of the Ministry of Home Affairs of the date of 2071/12/12 (March 26, 2015 A.D.) reads as above.

8. In the present writ petition that has been submitted today before this bench to for the sake of being decided upon being inducted to the weekly and daily cause list as per rule, learned advocate Mira Dhungana and Sushma Gautam, present on behalf of the petitioners, pleaded that there was no dispute in the matter that the petitioners, Surendra Paudel, Risha Paudel and Sujan Paudel, were the children of Nepalese citizens, Ganesh Bahadur Paudel and Usha Chhetri. After their father had gone saying that he would go to his permanent home, Bhojpur, he had not returned but become disappeared and without contact. As per the provision of Article 8 (2) (B) of the Interim Constitution of Nepal, 2063 and Clause 3 (1) of Nepal Citizenship Act, 2063, the fact that this Usha Chhetri is a citizen of Nepal by descent was clear. There was the provision in Rule 33 of Citizenship Rule, 2063 that person who did not have such address of father or mother could obtain citizenship. However, by fulfilling the aforementioned legal process, when the opponents, Surendra Paudel, Risha Paudel and Sujan Paudel, went to the Office of the Ward No. 12 of Kathmandu Metropolitan City to obtain citizenship by mother's name, the opponent Office refused to provide with recommendation for citizenship by giving oral order that they had to obtain citizenship from their father's address, that without father's coming, the law to provide citizenship by mother's name had not been made yet; hence, being compelled to live in stateless condition, the petitioners had been deprived of the constitutional right to obtain citizenship and legal right to obtain citizenship as a citizen. The aforementioned act of the opponents had been against the international documents in which Nepal is a party including the Interim Constitution of Nepal, 2063, Nepal Citizenship Act, and Rule, 2063; hence necessary order should be issued on the names of the opponents and the victims like her so as to make its interpretation to provide citizenship to the petitioners, Surendra Paudel, Risha Paudel and Sujan Paudel, by descent by mother's name.

9. Pleading was also heard which was presented by learned deputy attorney, Mr. Sanjiv Regmi, present on behalf of the opponent, including the Government of Nepal, stating that the Government of Nepal had not discriminated to provide citizenship to Nepalese citizens. For the sake of substantive right to obtain citizenship claimed by the petitioner, some procedural processes should also be fulfilled. It was said that citizenship would be provided when the evidence document mentioned by the petitioners as their father was submitted, but in the condition that it was not seen who the father was, without submitting the evidence document exposing relationship of being the father, the writ petition having the description that citizenship has not been provided should be revoked.
10. Upon hearing the aforementioned pleadings, while looking to, by studying the documents evidence attached to the document file, in the present petition, is the order supposed to be issued or not as per the petition claim? It is seen that decision is to be made regarding this issue.
11. While considering towards the decision, their pleading is seen to have maintained that they are the children of Ganesh Bahadur Paudel and Usha Chhetri who have been living on rent at K.D., K.M.C, Ward No. 12, Teku; in the course of living on rent at K.D., K.M.C., Ward No.12, Teku, mother Usha Chhetri was married on date 2044/11/3 (February 15, 1988 A.D.), and from that matrimonial relationship, they were born; then, the father went saying that he would go to his permanent home, Bhojpur; then he did not return, but became disappeared, and had not made contact since that time till now; they were now adult and when requested for the sake of recommendation to obtain citizenship; Ward No. 12 refused to be provided with recommendation.
12. Upon looking into the replica copy of the citizenship attached to the petition, petitioners' mother was born in Kathmandu district, K.M.C., Ward No. 12 on date 2026/4/10 (July 25, 1969 A.D.), and citizenship certificate of certificate No. 12382 was issued on her name from District Administration Office, Kathmandu on date 2042/11/1 (February 12, 1986 A.D.) and it is seen from the replica copies attached to the document file that certificate was issued on the name of father from Commerce Department on date 2050/10/8 (January 21, 1994 A.D.).
13. Birth registration certificate deed is seen to have exposed that among the petitioners, Surendra Paudel was born on date 2045/9/19 (January 2, 1989 A.D.), Rusha Paudel on date 2048/10/2 (January 16, 1992 A.D.) and Sujana Paudel on date 2051/8/2 (November 18, 1994 A.D.) at Maternity and Gynecology Hospital, Thapathali. Upon being disappeared, father had not come to contact and while trying to obtain citizenship by mother's name, they were refused to be provided with recommendation for citizenship; hence, petitioners have not been able to obtain Nepalese citizenship certificate; hence, the present writ petition is seen to have been furnished.
14. Upon looking into our constitutional provision regarding the citizenship, as per the provision made in Section (B) of Sub-article 2 of Article 8 of the Interim Constitution, 2063, provision is seen to have been made that if "father or mother" of a person was a citizen of Nepal at the time of his/her birth, such person shall be a citizen of Nepal by descent. There is similar type of provision in Sub-article (2) of Article 11 of the Constitution of Nepal. In Sub-clause (1) of Clause 3 of Citizenship Act, 2063, which was made to implement the provisions relating to citizenship remained in the Constitution, provision is seen to have maintained that if "father or mother" of a person was a citizen of Nepal at the time of his/her birth, such person shall be a citizen of Nepal by descent.
15. Due to the phrase "father or mother" used in the Constitution and Citizenship Act, if any one of "father or mother" is a Nepalese citizen, his/her children can obtain citizenship certificate as soon as they are 16 years of age. The matter of obtaining citizenship by whose name of father or mother is the matter that can be chosen by the person concerned. There is the condition as well that this matter has been accepted by this Court (N.L.M. 2066 D.No. 8175 P. 1014). Hence, it is not seen right by law to say that father's citizenship must be submitted when citizenship is demanded by mother's name. Though it is exposed by the birth registration certificate that of the petitioners, Surendra Paudel was born on date 2045/9/19 (January 2, 1989 A.D.), Rusha Paudel on date 2048/10/2 (January 16, 1992 A.D.) and Sujana Paudel on date 2051/8/2 (November 18, 1994 A.D.) at Paropakar Maternity Hospital and Gynecology Hospital, Thapathali, father is not in contact upon being disappeared, has never taken mother and them home even after marriage; hence, evidence deed of migration could not be made; in this condition, petition is seen to have mentioned the matter that the opponent has said that citizenship must be obtained from the father's address and that they were refused

to be provided with recommendation for the citizenship for the sake of obtaining Nepalese citizenship.

16. Upon looking into regarding this context, first of all, in connection that the petitioners said father as disappeared, it is not that the petitioners cannot obtain citizenship even if father is disappeared. Upon looking into the relativity of the provision of Article 8 (3) of the Interim Constitution of Nepal, 2063 and Article 11 (4) of the Constitution of Nepal, it is seen that there is the provision that in connection to the person, who is found within Nepal and the whereabouts of whose father and mother are not known, can also obtain citizenship of Nepal by descent; whereas, in Article 11 (5) of the Constitution of Nepal, it is seen that there is provision that a person who is born in Nepal from a citizen mother of Nepal and has resided in Nepal, can obtain citizenship of Nepal by descent. Here is not the condition that the parents of the petitioners have not been found or father could not be identified. The petitioners have clearly mentioned their father's name and address. They have their statement that after the father had gone saying that he would go to his permanent home, Bhojpur, and would return after three or four weeks, he did not come back, but became disappeared and without contact. It is not seen from affidavit that this is wrong. Main thing is that as there is provision in the Constitution and Act that citizenship can be obtained by the name of any one of father or mother, application can be furnished by keeping mother's citizenship when father is disappeared. In such a situation, it is not right to refuse to provide citizenship certificate by posing hurdle saying that father's citizenship could not be submitted or citizenship must be made upon going to the father's address.
17. Birth registration certificate deed shows that the petitioners were born at Maternity and Gynecology Hospital, Thapathali. Birth registration certificate and S.L.C. certificate deed show that the petitioners are over 16 years of age. There is no dispute on that upon being a Nepalese citizen by descent, the petitioners' mother was born in Kathmandu district, K.M.C., Ward No. 12 on date 2026/4/10 (July 25, 1969 A.D.) and obtained certificate of C.C.No. 12382 issued on her name on date 2042/11/1 (February 12, 1986 A.D.) by District Administration Office; hence, they are seen to have been the persons qualified to obtain citizenship of Nepal if they fulfill the procedure prescribed in Nepal Citizenship Act, 2063 and Rule of the same.

18. Here, pleading is seen that the petitioners have been in trouble because the Ward Committee has refused to provide with recommendation when they demand the recommendation prescribed in the Act and Rule; whereas, Ward Committee is found to have refused that matter, too. Substantially, the citizenship certificate identifies a person as a citizen of a particular country. Without becoming a citizenship, political rights cannot be used. Citizenship certificate is very essential to use political and economic rights and to identify as a citizen. State offers various fundamental rights to its citizens such as using fundamental rights, obtaining employment, and casting votes etc. political right shall not be obtained by a person other than the citizen. Citizenship is an extremely issue linked to personal and identity of a person; hence, in the situation that one is seen to have been a citizen, it is not just to trouble by posing tiny hurdle of procedure.
19. There is the provision of right to equality in Article 18 of the Constitution. The right of Article 18 is the fundamental right to be obtained by all the citizens without discrimination. Guarantee has been done in Article 18 (1) that all citizens shall be equal before law and no person shall be denied the equal protection of law. The matter that no person shall be discriminated based on gender has been mentioned in Article 18 (2). In addition to this, there is the provision in Sub-article (1) of Article 38 that a woman shall have the equal lineage right without gender-based discrimination. Successor of the lineage and equal right to identity based on that also fall within the equal linear right. Although, the present petition was filed when the Interim Constitution of Nepal was effective, however, no ground and reason is not seen here that the rights guaranteed by the new Constitution or the Constitution of Nepal shall not be obtained by the petitioners.

Though it is justified from her citizenship certificate of Nepal that petitioners' mother, Usha Chhetri, is a citizen of Nepal, in the condition that their father has been disappeared, and not to issue the citizenship certificate of Nepal by showing the petitioners the reason that law has not been made to provide citizenship by mother's name, it seems that condition has appeared here to breach in the fundamental right not only of the petitioners but also of their mother, Usha Chhetri. It is seen that opponents could not view that such act of discrimination done upon women based on gender shall kidnap the right to equality of the women.

20. On the writ petition having including Sabina Damai versus the Government of Nepal (Writ No. 2067-WO-0703, N.L.M 2068, D.No. 2 Page 247), mandamus is seen to have been issued on the name of District Administration Office to provide citizenship by mother's name as well. After that, it is seen from the affidavit of the Office of the Prime Minister and the Council of Ministers that order has been issued on the name of the Ministry of Home Affairs, too, for the sake of implementation of the aforementioned order; hence, it was gone by writing to the Ministry of Home Affairs on date 2068/3/6 (June 20, 2011 A.D.) and through the letter of the Ministry of Home Affairs of the date of 2068/5/5 (August 22, 2011 A.D) and regarding issuing the citizenship certificate by mother's name, the Ministry of Home Affairs circulated on date 2069/10/7 (January 20, 2013 A.D.) to all the District Administration Offices and the bodies concerned for the sake of the implementation of the aforementioned order. Likewise, on the petition (Writ No. 2069-WO-0880) having including Bhola Nagarkoti versus the Government of Nepal also, mandamus is seen to have been issued by this Court on the name of District Administration Office, Kathmandu to provide citizenship by mother's name. The decision made on the writ petition of Ranjita Thapa has been mentioned above. Thus, from the previous decisions made by this Court, the matter is seen to have been established that the petitioners can obtain citizenship by Nepalese citizen mother. Since there is the demand of the petitioners to obtain citizenship by mother's name, the matter where father has gone or what has happened is seen to have been irrelevant. When the petitioners have claimed that they have been residing at Ward No. 12 and they have been studying at Kathmandu, whether or not they reside at that Ward can be learned by examining the house owner or getting spot investigation done at the neighborhood or tole. While refusing to provide citizenship by saying that recommendation shall be provided only after father's certificate is submitted or that law has not been made to provide citizenship by mother's name, the person who is supposed to obtain citizenship shall be naturally deprived of it. It is not seen congruent to law to say that recommendation

shall not be provided on such ground. Such matter is seen to have been against the right to equality as well; hence, condition does not exist to accept it.

21. Hence, from the analysis done above, in the present case, it is justified that Usha Chhetri, the mother of the petitioners, Surendra Paudel, Rusha Paudel and Sujana Paudel, is a Nepalese citizen, and the petitioners are seen to have been born in Nepal from the Nepalese citizen, Usha Chhetri, and they can obtain citizenship by mother's name; hence, it is decided that mandamus order shall be issued on the name of Office of the Ward No. 12 of Kathmandu Metropolitan City, not to refuse to provide recommendation, saying that father's citizenship has not been submitted, if the petitioners submit mother's citizenship, and on the name of the opponent, District Administration Office, Kathmandu not to deprive the petitioners of citizenship on the ground that father's certificate has not been submitted in the situation that the petitioners have clearly mentioned in the petition that they have been residing at maternal uncle's home and mother's citizenship has been submitted, and to provide citizenship certificate as per claim. As per the decision made by this Court upon the aforementioned writ petition of Sabina Damai on the issue that citizenship can be obtained by mother's name, it is exposed that circulation has been made for all the District Administration Offices; condition does not appear to issue re-order on the name of all the District Administration Offices. Provide information of the order to the opponents and submit the document file to the record section as per rule, by striking off the record of the case file.

Justice

I am with the said opinion.

Justice

Bench Officer: Mankumari G. M. B.K. (Under-Secretary)

Computer Setting: Prem Bahadur Thapa
2073/05/13/01 (Monday, 29th August, 2016)

Bhadra 16, 2073 (1st September, 2016)

Supreme Court

Division Bench

Honorable Justice Gopal Parajuli

Honorable Justice Hari Krishna Karki

Order

071-WO-0990

Case: Including Certiorari

Mala Khadka Ghimire alias Maiya, on self behalf and on behalf of Saru Ghimire daughter of Mala Khadka Ghimire alias Maiya, a daughter of late Tap Bahadur Kahdka, a resident of Ward No.5 of Himganga VDC of Ramechhap district and presently residing at Ward No.1 of Balkot Rural Municipality of Bhaktapur district1 Petitioner

Vs.

Nepal Government, Office of Prime Minister and Council of Ministers, Singha Durbar, Kathmandu.....1
 Ministry of Home, Singha Durbar, Kathmandu1
 Ministry of Women, Children and Social Welfare, Singha Durbar1 Opponent
 Ministry of Federal Affairs and Local Development Lalitpur1
 Office of Himganga VDC, Ramechhap1
 District Education Office, Kathmandu1

The fact in nutshell and order in this writ petition fallen under the jurisdiction of this court under Article 32 and 107 (2) of the constitution of Nepal have been as follows.

I had a love marriage with Keshab Ghimire, a resident of Ramechhap district, Himganga V.D.C., Ward No. 5 in the month of Magh of the year 2054 (January/February 1998 A.D.). I gave birth to a daughter on date 2055/6/30 (October 16, 1998 A.D.) from our conjugal relation. Presently, I, the applicant, am staying, by taking the daughter, Saru, along with me, in rented room in Bhaktapur district, Balkot Municipality, Ward No. 1. However, her father has not accepted as a daughter yet. The daughter, Saru, is presently studying in grade 10 at Sutherland Secondary School, Naikap. Form had to be filled up for S.L.C. exam while she was studying in grade 9, and the stated form of S.L.C. examination had to be sent to District Education Office, replica copy of the birth registration certificate of the daughter had also to be sent along with the stated form while sending it, otherwise she would not be allowed to be involved in the S.L.C. examinations; hence, Motherland

Secondary School where she had been studying was orally reminding from time to time since the month of Magh of the year 2071 (January/February 2015 A.D.); when the father of this daughter and my husband, Keshab Ghimire, was requested to get the daughter's birth registered, he did not comply with getting her birth registered. Consensus could not be forged even upon both the parties' being present in Ramechhap District Administration Office, after furnishing application to National Women Commission about domestic violence for getting the birth registered, and dispatching it from there to Ramechhap District Administration Office. Meanwhile, after receiving the letter of Sutherland Secondary School, where the daughter, Saru, was studying, with the description that birth registration certificate should be provided within the month of Chaitra of the year 2071 (March/April 2015 A.D.), when I, the applicant, went to Office of Himganga V.D.C. to get the daughter's birth registered by filling up the form of information of birth as per Schedule 2 (Relating to Rule 5) of Birth, Death and Other Personal Events (Registration) Rule, 2034,

behavior was shown contrary to the provision of Section 4 (1) (a) of Birth, Death and Other Personal Events (Registration) Act, 2033. Upon going to get the daughter's birth registered, the V.D.C. Secretary did not comply with getting birth registered, stating that birth could not be registered if there was not the father of the daughter; hence, the aforementioned filled up birth registration information form was again sent with registry from Kathmandu to the Office of Himganga V.D.C. on date 2072/1/2 (April 15, 2015 A.D.); but while enquiring in V.D.C. on date 2072/2/12 (May 26, 2015 A.D.), the Secretary said that registry had been received but he would not register, and he has not got it registered yet, nor has he extended any other information either; hence, this writ petition has been brought since there is no other alternate way.

Article 22 (1) of the Interim Constitution of Nepal, 2063 has made clear provision under the Fundamental Rights, stating that every child shall have the right of his or her identity and name. Similarly, in Sub-section (1) of Section 4 of Birth, Death and Other Personal Events (Registration) Act, 2033, under the title of Information of Personal Events, "For the sake of getting personal events registered in the following situations, following persons shall have to furnish information to the Local Registrar's Office by filling up the form as prescribed, within thirty-five days from the occurrence of such event."

Clear provision has been made stating that information of birth shall have to be provided by the chief person of the family, and by adult person of the family in his or her absence. After providing information thus, in Sub-section (1) of Section 5 of aforementioned Act, under the title of "Registration of Personal Events", immediately after the information is provided, Local Registrar shall register such event in the Register Book by doing as follows"-

- a) By examining whether the form filled up by the person who comes to provide information is right or not, and by making it right if it is not right, and
- b) By filling up or getting the form filled up himself or herself as said by the person if he or she, who comes to inform, is illiterate, and getting his thumb impression done.

There is clear provision in Sub-section (3) that if personal event comes to get registered within 35 days from elapsing the deadline prescribed in Sub-section (1) or (2) of Section 4, Local Registrar shall register upon taking charge of eight rupees. There is clear provision in Sub-section (4) that Local Registrar shall register upon fining up to maximum 50 (fifty) rupees from the one who does not get

personal events registered within the deadline. As per Section 6 of the stated Act, there is provision that "immediately after the personal event is informed of, Local Registrar shall provide the person prescribed with free certificate of registration." In 1 (a) of the Directives given to Local Registrars relating to the registration of personal events 2067, "Birth registration means getting a child's legal rights established by getting his or her birth registered within 35 days after the child is born in a family. The information of birth shall have to be provided by the chief person of the family or by adult person of the family in his or her absence. Without this evidence, the child may neither get what is to be provided by the government nor the facility and legal rights to be obtained as per other laws. Hence, it is necessary to pay special attention to this event. Birth registration is the first right of a person. Convention on the Rights of the Child (CRC) has assumed birth registration as a primary right of a child. "Every child has the right to a legally registered name and nationality, as well as the right to know and, as far as possible, to be cared for by their parents." (Article 7 (1)). Similarly, for the sake of the implementation of the order as follows, regarding to registering the births of the children upon the Writ No. 121 of year 2060 B.S. (2003/04 A.D.) of the Supreme Court, issued by the Special Bench of the Justices Mr. Anup Raj Sharma, Sharada Prasad Pandit and Arjun Prasad Singh on date 2062/5/30 (September 15, 2005 A.D.), it has come with writing through the letter of D.No. 211, on date 2062/8/9 (November 24, 2005 A.D.), of the Legal Section of the Office of the Prime Minister and the Council of Ministers, and the letter of D.No. 86, on date 2062/10/2 (January 15, 2006 A.D.), of the Preparation Section, the Ministry of Law, Justice and Parliamentary Management, directives have been issued to all the registrars on the matters of implementing the order. It is decided that the phrase "among the males" remained in the phrase "information of birth and death by the chief person of the family and by the eldest person among the adult males of the family in his or her absence" contained in Part (a) of Sub-section (1) of Section 4 of Personal Events (Registration) Act, 2033 shall be inactive as per Article 131 of the Constitution. Hence, after the stated phrase is withdrawn from the aforementioned Section, the eldest person among the adults of the family may become the informant and get the events of births and deaths registered. To comply with the aforementioned constitutional and legal provisions regarding birth registration is the duty of the opponent No. 6. However, the opponent bodies have committed injustice upon my daughter, Saru, and me, the petitioner, without complying with the provisions above.

Hence, when I went to Ramechhap district, the

Office of Himganga V.D.C. upon getting the form as per Schedule 2 filled up for the sake of registering the daughter's birth, the birth was not registered; hence, the identity of my daughter has been vanished and she has been deprived of the rights and powers to be created on the basis of the identity of the daughter. Thus, since the father has refused to get the birth registered, the birth of my daughter was not registered; hence, order and command including mandamus, whichever is needed, should be issued on the name of the opponent, the opponent the Office of Himganga V.D.C. to register or get the birth of the daughter registered by me, the applicant, being an informant. Since conditions have been put in the provision of Schedule 2 of Birth, Death and Other Personal Events Registration Rule, 2034, so that it would be almost difficult and impossible to register the births of children by becoming an informant by a single mother; hence, the stated provision is illegal and unconstitutional. Hence, the conditions of the stated Rule should be declared revoked with certiorari order as per Article 107 (1) of the Interim Constitution of Nepal, 2063. A glaring condition has appeared to inflict the daughter, Saru Ghimire, with irreparable loss, such as depriving her of the right to education in the condition of not being allowed to take S.L.C. due to not having birth registration certificate; hence, interim order should also be issued on the name of District Education Office, Kathmandu and Sutherland Secondary School, Naikap, Kathmandu to receive the form of S.L.C. examinations without rejecting the form despite not having birth registration of Saru Ghimire presently, and to involve her in the S.L.C. examinations. Petition claim of the petitioner, Mala Khadka Ghimire, reads as above.

What has happened in this? Why is the order as per the petitioner's claim not supposed to be issued? Submit after receiving affidavits or elapsing deadline by issuing summon notice on the names of opponents to submit affidavits within 15 days from the date of receiving this order, excluding the time limit of traveling by road, if there is reason as per law for not issuing the order. Moreover, while considering towards the interim order claimed, the petitioner seems to have been continuing the attempts for birth registration, and the issue seems to have been connected to the right to education of the girl child, interim order has been issued on the names of the opponents as per Rule 41 (1) of Supreme Court Rule, 2049 to continue the process by presently accepting the petitioner's S.L.C. form, letting it happen as per decided later. Provide the opponents with the information of order. Order issued by this Court on date 2072/3/15 (June 30, 2015 A.D.) reads as above.

The writ petitioner has not been able to mention anything in her petition regarding what kind of constitutional and legal rights and powers have been affected by what kind of acts and actions of this Ministry. While laying claim of anything against anybody, evidence, with which the court also should be satisfied, should be submitted by clearly mentioning regarding which right conferred by which law has been affected how due to which or what kind of action or decision. Since no ground and reason could be revealed to make this Ministry a respondent, the opponent's writ petition should be revoked in case of the Ministry. Affidavit of the Ministry of Federal Affairs and Local Development reads as above.

The opponent writ petitioner has not mentioned in the petition which acts and actions of this Ministry have affected what kind of rights. For the sake of the process of registering birth, death and other personal events, Personal Events Registration Act, 2033 and Birth, Death and Other Personal Events Registration Rule 2034 have been formulated and enforced. The matters relating to personal events registration happening as per the stated Act and Rule do not fall under the working areas of this Ministry; hence, it does not appear to mention anything in the present affidavit. Due to the stated ground, the opponent's writ petition should be revoked. Affidavit of the Ministry of Women, Children and Social Welfare reads as above.

In the notice of connected departmental office, Office of the Controller of Examination, Sano Thimi, Bhaktapur, which carries out all the works relating to S.L.C. examinations, which was published in Gorkhapatra on date 2071/2/15 (May 29, 2014 A.D.) for filling up or getting registration form filled up for the sake of being involved in S.L.C. examinations 2072 (2016 A.D.), mentioned that birth registration certificate had to be included; hence, the birth registration certificate was sought because the School had to fill or get the registration form filled up as per that notice, and District Education Office also mentioned the description that birth registration certificate was required. Since works were done by this Office as per law and directives, the opponent's writ petition should be revoked. Affidavit of District Education Office, Kathmandu reads as above.

On the basis that while going to Ramechhap district, Office of Himganga V.D.C. for the sake of registering the birth by filling up the form as per Schedule 2, birth was not registered, and the father did not register the daughter's birth, claim is seen to have been laid by the petitioner, stating that the provisions of (1) and (2) of Part (e) under the title of Description of the parents of newborn of Chapter No. 3 of the Birth Information Form of Schedule-2 of Birth,

Death and Other Personal Events (Registration) Rule 2034 are illegal and unconstitutional, hence should be revoked. By making provision that the informant who provides information of the birth shall have to fill up the descriptions of including the parents of the newborn, Chapter No. 3 of the stated notice form seems to have made the provision that names and surnames, permanent address, age at the time of the birth of the newborn, country of birth, citizenship, C.No. if citizenship obtained, date of issue, district, education, language, religion, number of children born up to now, number of living, person who helped at the time of birth and the year of marriage held of the parents of newborn as well shall have to be filled up. This provision can never be meant as a mandatory provision for submitting the citizenships of both the parents in order to register the birth. From this, the stated provision of the Schedule has not contradicted to any international treaties and agreements in which Nepal is a signatory, including the Constitution. In the case of Writ No. 121 of the year 2060 B.S. (2003/04 A.D.), as per the order issued on date 2062/5/30 (September 15, 2005 A.D.) by Special Bench of the esteemed Supreme Court, regarding registering the birth of the child whose father's identity could not be revealed, Ministry of Local Development already gave clear directives to all the local office bearers on date 2062/10/13 (January 26, 2006 A.D.) to let the birth be registered on the basis of mother's citizenship, by writing the description of unavailability of address in the Chapter of the father's description of information form for registering the births of the children of whose fathers 'addresses have not been known; hence, the content raised in the writ petition has been addressed; hence, order is not supposed to be issued as per the petitioner's claim. Affidavit of the Office of the Prime Minister and the Council of Ministers reads as above.

Regarding the registration of the birth of a person, it is mentioned in Section 4 (1) of Birth, Death and Personal Events (Registration) Act, 2033 that the form as prescribed shall have to be fulfilled and submitted to the Local Registrar's Office within 35 days from the occurrence of the event. In Section 4 (1) (a), it is mentioned that the chief person of the family shall have to fill up the notice of birth and death. In Section 4 (1) (b), it is mentioned that both the husband and wife shall have to furnish the information of marriage. Instead of getting the event of marriage registered by getting the husband also attended, the writ petitioner does not appear to have got so done. Instead of getting the birth registered by providing information within 35 days from the birth of the daughter, Saru, the father, chief man of the family, does not appear to have done so. Procedure and process guided by the law have not

been adopted; hence, the opponent's writ petition is not supposed to be issued. As per mentioned regarding the birth registration in Rule 5 (1) of Birth, Death and Other Personal Events (Registration) Rule 2034, form as per Schedule-2 has to be filled up and submitted to the Registrar's Office within the deadline of the Act. There is provision in the form of Schedule 2 for compulsorily mentioning the names, surnames, addresses and citizenship Nos. of the parents; hence, birth is not to be registered simply because of sending off via post office by filling up the Schedule form. There is dispute on the relation of the husband of the opponent writ petitioner, and there is not even certainty about where the local address is, and instead of furthering the procedure of getting the birth registered by filling up the Schedule by providing information upon attending to this Office, the petitioner herself does not seem to have done anything of it. Birth cannot be registered without fulfilling the rule and process of the Act, Rule; hence, the opponent's writ petition should be revoked. Affidavit of the Office of Himganga V.D.C., Ramechhap reads as above.

As per the Government of Nepal (Work Division) Rule 2069, the work of registration of birth, death and other personal events falls under the jurisdiction of the Ministry of Federal Affairs and Local Development. There is provision for registering the birth of any person by Local Registrar as per (Registration) Act, 2033 and same Rule 2034; hence, the writ filed by making this Ministry an opponent upon taking the issue of birth registration for granted is revocable. The writ petitioner cannot mention in the writ petition what kind of constitutional and legal rights have been affected by what kinds of acts and actions of this Ministry as well; hence, petitioner's writ petitioner should be revoked. Affidavit of the Ministry of Home Affairs reads as above.

In the present case that has been submitted upon being inducted to the daily cause list as per Rule, pleading was heard which was made by learned advocate, Ms. Mira Dhungana, present on behalf of the petitioner, stating that it did not appear to dispute on the fact that marriage of Mala Khadka alias Maiya had been held with Keshab Ghimire on 2055/6/30 (October 16, 1998 A.D.) and even a daughter Saru Ghimire was born. The father had not accepted as daughter and not registered birth; hence, when the mother, Mala Khadka alias Maiya, went to the opponent Office of Himganga V.D.C. to register the daughter's birth by filling up form of information of birth as per Schedule 2 (Relating to Rule 5) of Birth, Death and Other Personal Events (Registration) Rule, 2034, behavior was shown by opponent Office contrary to the provision of Section 4 (1) (a) of the same Act. In order to register the

birth, V.D.C. Secretary did not accept to register the birth of the daughter, stating that birth could not be registered if there was no father of the daughter; and conditions were put in Schedule 2 of Birth, Death and Other Personal Events (Registration) Rule, 2034, making it almost difficult and impossible to register the birth of children by becoming single mother the informant; hence, the stated provision was illegal and unconstitutional; hence, by declaring the conditions provisioned in 1 and 2 of (e) of 3 of Schedule 1 of the stated Rule invalid and revoked with certiorari order as per Article 107 (1) of Interim Constitution of Nepal, 2063, order should be issued as per petition claim.

Pleading was heard which was made by joint-attorney Mr. Kiran Paudel, present on behalf of the opponent, the Government of Nepal, stating that in the condition of fulfilling the process of Personal Events Registration Act, 2033 and Birth, Death and Other Personal Events Registration Rule, 2034, the petitioner's personal event can be naturally registered. As per the order issued in the case of Writ No. 121 of the year 2060 B.S. (2003/04 A.D.), clear directives had been issued to local office bearers to register the births on the basis of the mother's citizenship in case of including the children, whose father had not been traced; hence, there was no condition to issue order as per petition claim; hence, the writ petition should be quashed.

Now, it seems that decision is supposed to be made whether the order is supposed to be issued or not as per petition claim.

In this, upon considering towards the decision, stating that since birth was not registered even after she had gone to Ramechhap District, Office of Himganga V.D.C. after filling up the form as per Schedule 2 for the sake of birth registration of the daughter; hence, daughter's identity was vanished and she was deprived of the rights and powers to be obtained on the basis of the identity and that since the father refused to register the birth, birth registration could not be obtained; hence, petition seems to have been furnished to get the order issued on the name of the opponent, Himganga V.D.C., Ramechhap to register or get the birth of the daughter registered by mother's becoming the informant. In Section 4 of Birth, Death and Other Personal Events Registration Act, 2033, legal provision seems to have been made, stating "Information of personal events: (1) For the sake of getting personal events registered, in following conditions, following persons shall have to furnish information to the Local Registrar's Office within thirty-five days of the occurrence of such event by filling up form as prescribed:-

- (a) Information of birth and death, by the chief person of the family and by adult person in his or her absence,
- (b) Information of marriage, by both the husband and wife,
- (c) Information of divorce, by husband or wife,
- (d) Information of migration, by the chief person of the family in case it is a family that migrates, and by migrant in case it is not a family."

As per the stated legal provision, it seems that information of the birth may be furnished to Local Registrar's Office by the chief person of the family and by the adult person of the family in his or her absence, upon filling up the form as prescribed. In Section 5 of the same Act, legal provision seems to have been made, stating, "To register personal events: (1) Immediately after receiving the information as per Section 4, Local Registrar shall register such event in the register book concerned, by doing as follows:

- (a) By examining whether the form filled up by the person who comes to furnish information is right or not, and getting it made right if is not right, and
- (b) By filling up or getting the form filled up himself or herself, if the person who comes to furnish information is illiterate, and getting thumb impression done"

As per the stated legal provision, it does not seem that the form has been registered in the related register book after examining whether it is right or not, and neither there is the condition to say that it shall not be registered, if there is reason not to register as per other laws, by revealing the same ground and reason.

Precedent seems to have been set up (Dipti Gurung in the case of the petitioner, Nikita Gurung, opponent including the Office of the Prime Minister and the Council of Ministers, Case Certiorari Mandamus, Case No. 070-WO-0932 Decision Date 2071/10/26 (February 9, 2015 A.D.)), stating, "in case the description mentioned in the form of Schedule 2 of Birth, Death and Other Personal Events (Registration) Rule, 2034 which is provided by the petitioner, or if brought stating that it could not be filled up, mandamus shall be issued on the names of the opponents to register in the status quo by accepting it. Moreover, directive order has been issued on the names of including the opponent, the Office of the Prime Minister and the Council of Ministers to reform or make amendment by reviewing to adjust the provision of the stated Schedule 2 in the circumstances like that of the

petitioner whose father cannot be identified.”

Although it is seen from the affidavits of the Government of Nepal, Office of the Prime Minister and the Council of Ministers, stating that the precedent is found to have been maintained in this issue by the Special Bench of this Court (Including Tek Tamrakar on behalf of People Welfare Protection Forum for the Upliftment of Dalit Community versus including His Majesty’s Government, Secretariat of the Council of Ministers, Subject Including Mandamus, N.L.M. 2062 Asoj (September/October 2005 A.D.), D.No. 7550, Page 680), stating, “By accepting the limit up to what has been filled up by the one who wants to get the birth registered or who brings whatever description which can be filled up, to register the birth of the child is the duty of the state. Otherwise, there will be other complications later. Do not refuse to register the birth of all the children including the children of Badi community whose fathers have not been traced simply because their fathers have not been traced.” In the case of Writ No. 121 of the year 2060 B.S. (2003/04 A.D.), as per the order relating to registering the births of children issued on date 2060/5/30 (September 16, 2003 A.D.) by the Special Bench of the esteemed Supreme Court, the Ministry of Local Development had given clear directives to the Local Registrars on date 2062/10/13 (January 26, 2006 A.D.) that they could register the births on the basis of mother’s citizenship by writing the description that there was not address in the Chapter of the father’s descriptions of the information form to register the births of children whose fathers have not been traced; hence, the content raised in the writ petition has been addressed,” birth of this petitioner is not seen to have been registered on the basis of the description provided by the mother as per this.

On the basis of including the aforementioned legal provision and precedent propounded, since birth may be registered on the basis of the description furnished by mother who provides information even in the condition that the father is not traced

or refuses, in the present issue, in case father’s name and address is clearly mentioned, the adult mother may furnish information in the absence of the chief person or father of the family who is to provide information as per Section 4 (1) (a) of Birth, Death and Other Personal Events Registration Act, 2033, and though the form filled up as per Section 5 of the same Act could be registered by examining it, the act or behavior of not registering the form as per Schedule and refusing to register birth appears as contrary to the legal provision and directives mentioned.

Hence, from the analyzed basis and legal provisions, condition seems that Nepali citizen woman may register the births of her children with the status of single mother as well, and in case claim is laid by clearly revealing father’s name and address, it seems that petitioner mother may obtain birth registration of the daughter by becoming informant; hence, it is decided that mandamus order shall be issued on the names of the opponents not to refuse to register the birth simply because the chief person of the family is not present or father refuses to register the birth, and do the works including recommendation whichever is needed as well as registering the birth as per law, if demand is made by revealing the descriptions including the birth for the sake of birth registration. Provide the opponents with the information of present order through Attorney General’s office.

S/d
Judge

Agree with the said opinion.

S/d

Bench Officer: Harka Bahadur Chhetri

Type in Computer by: Ram Sharan Timilsina

Done On: 2073/05/16/05 (Thursday, 1st September, 2016)

Mangsir 27, 2073 (12th December, 2016)

Supreme Court

Division Bench

Honorable Justice Dipak Kumar Karki

Honorable Justice Dr. Ananda Mohan Bhattarai

Order

070-WO-0178

Subject: Certiorari et al

Samin Thapa, a resident of ward No 35 of Kathmandu Metropolis of Kathmandu district...1
 Kopila Magar, a resident of ward No 35 of Kathmandu Metropolis of Kathmandu district...1 Applicant

Vs.

Nepal Government, Office of Prime Minister and Council of Ministers, Singhadurbar
 Kathmandu1
 Nepal Government Ministry of Home, Singhadurbar, Kathmandu1
 Nepal Government Ministry of Federal Affairs and Local Development Singhadurbar,
 Kathmandu.....1 Opponent
 Nepal Government Ministry of Law, Justice, Constituent Assembly and Parliamentary
 Affairs Singhadurbar Kathmandu1
 District Administration Office, Kathmandu, Babarmahal1
 Office of ward No 35 of Kathmandu Metropolis of Kathmandu district1

Fact and order of the present writ petition that has been submitted by being fallen under the jurisdiction of this Court as per Articles 32, 107 (2) of the Interim Constitution of Nepal, 2063 are as follows:

We, the petitioners, are the persons deprived of the right to obtain citizenship and to provide citizenship through own name, hence, have come to make a plea for the justice, carrying this writ petition, requesting that mandamus order or other order, command, whichever is needed, for the sake of feeling of the acquisition of justice by guaranteeing equal right to obtain citizenship and to provide own children with citizenship through own name that has been granted by the constitution of Nepal as per 107 (2) of the Interim Constitution of Nepal, 2063.

On Mangsir 10, 2050 B.S. (November 25, 1993 A.D.), an unidentified person, whose name, house not known, raped me, Kopila Magar, of the petitioners, hence, daughter, Samin Thapa, was born on date 2051/5/11 (August 27, 1994 A.D.) at home in K.D., K.M.C., Ward No. 35. I still cannot identify the

person who raped me. Presently, the daughter has passed 10+2 and studying higher education; hence, the campus is making demand of the daughter's citizenship. On date 2070/3/9 (June 23, 2013 A.D.), when we went to Ward Office to obtain recommendation for the sake of citizenship certificate, we were refused to be provided with recommendation stating that recommendation cannot be provided until the father was traced. Upon filling up the form of Schedule 1 as per rule, when we went to Kathmandu District Administration Office on date 2070/3/11 (June 25, 2013 A.D.), the application was returned without even registering by giving oral order, stating, "without father, daughter cannot be provided with the citizenship; descent means father."

I, Samin Thapa, of the petitioners, am being nurtured, provided with education, health treatment by my mother, Kopila Magar, and I have grown up, raised and been educated under the single mother since I was born. I have not seen the face of the father yet nor have I heard even his name. Mother

has given birth, raised, brought up and even educated me. I also want to achieve and make my identity by her name. Even in Article 8 (2) (B) under Part 2 of the Interim Constitution of Nepal, 2063 and Sub-clause (1) of Clause 3 of the Nepal Citizenship Act, 2063, provision has been made in the Constitution and in law that if any one of father or mother is a Nepalese citizen, his/her children shall be the citizens of Nepal by descent. However, by depriving me, the petitioner, Samina Thapa, of obtaining citizenship certificate simply because my father has not been identified, condition has been created to exterminate my identity due to the oral order of the opponents. It has been injustice to me by refusing to register my birth saying that my father has not been traced.

I, Kopila Magar, of the petitioners, being a single mother of the daughter, have been providing her with patronage. The condition is that I was raped and left out by an identified person and has not been found even upon searching for. As per Article 8 (2) (B) of the Interim Constitution of Nepal, 2063, Clause 3 (1) of Nepali Citizenship Act, 2063, Rule 3 (1) of Citizenship Rule, 1.2 of (2) of Chapter 2 of Citizenship Certificate Distribution Procedure Directives, as per the clear provision that mother can grant identity by providing citizenship to her children, order, command, including the mandamus order whichever is needed, should be issued stating to provide my daughter with citizenship certificate by descent by mother's name. I, Samin Thapa, of the petitioners, was nurtured, given education, by giving birth, brought up and educated, providing health treatment by my mother, Kopila Magar; hence, as per constitutional and legal provisions, my mother has the right to provide identity through her name, and right to obtain identity through my mother's name is ensured for me; hence, order, command including the mandamus order, whichever is needed, should be issued stating to provide me with citizenship through my mother's name. Writ petition reads as above.

Giving order to submit affidavit by clarifying if there is reasonable ground and reason so as not to issue order as per the claim of the petitioner, first priority has been granted as it is seen that the present petition is supposed to be decided quickly. Order of this Court, of the date of 2070/5/18 (September 3, 2013 A.D.), reads as above.

Remaining under Section (B) of Sub-article of 2 of Article 8 of the Interim Constitution of Nepal, 2063, Clause 3 of Nepal Citizenship Act, 2063, Nepal Citizenship Rule, 2063 and the directives formulated under this, the Government of Nepal has been providing Nepalese citizenship by descent, and no Nepalese citizen has been derived of obtaining citizenship by mother's name as per aforementioned

law, and this Ministry has no involvement in the act relating to providing citizenship; hence, the writ petition filed by making this Ministry an opponent should be revoked. Affidavit furnished on behalf of the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs reads as above.

As per mentioned in her writ petition by the writ petitioner including Samin Thapa, the matter that Nepalese citizenship certificate was not provided to her when she demanded citizenship certificate by fulfilling procedure prescribed by law upon remaining under the Nepali Citizenship Act, 2063 and Rule is false. To obtain citizenship as per law is the natural right of all Nepalese citizens; hence, circulation was also made on date 2068/5/5 (August 22, 2011 A.D) through this Ministry to all the Offices under it stating to provide citizenship certificate by mother's name as well by fulfilling all the legal processes prescribed by Act and law. It is the duty of these petitioners to submit along with the application the documents to be submitted while obtaining citizenship certificate. It is not right to say that citizenship certificate has not been provided, without fulfilling the process. Hence, no acts and actions of this Ministry has breached the fundamental right of the petitioners; hence, in connection to this Ministry, interim order and writ is not supposed to be issued as per claimed in the petition; hence, it should be revoked. Affidavit furnished on behalf of the Ministry of Home Affairs reads as above.

As per mentioned in the writ petition, the writ petitioner does not seem to have submitted the application to this Office by fulfilling the process as per Citizenship Act, 2059 and Citizenship Rule, 2063. The service seekers concerned, who fulfill the process as per aforementioned Citizenship Act and Rule to obtain Nepalese citizenship certificate issued by this Office, are being provided with citizenship certificate. The writ petitioner has not furnished application to this Office; in this condition, present writ petition should be revoked in connection to this Office. Affidavit furnished on behalf of District Administration Office, Kathmandu reads as above.

Apart from the Interim Constitution of Nepal, 2063, Nepal Citizenship Act, 2063 is also found to have made the provision that the citizenship of Nepal can be obtained based on equality without discrimination. It cannot be said that the lien on posts, who have legal duty to make recommendation for citizenship and provide citizenship certificate by remaining under the existing law, have to provide citizenship certificate to the opponent petitioner without following the rule, process and procedure determined in law. Upon the writ petition of Writ No. 0703 of the year 2067 B.S., directive order was issued by the esteemed Supreme Court on

the name of the Ministry of Home Affairs on date 2067/11/15 (February 27, 2011 A.D.), and letter with information of 3-point circulation made to all the District Administration Offices for the sake of its implementation; hence, condition does not appear to issue re-order by the esteemed Court in the context of the same issue; writ petition should be revoked. Affidavit furnished on behalf of the Office of the Prime Minister and the Council of Ministers reads as above.

The acts including making recommendation for citizenship certificate and providing citizenship certificate do not fall within the scope of this Ministry as per the Nepal Government (Work Division) Rule, 2069; hence, regarding this, having any legal duty and liability of the Ministry, she has not been able to mention anywhere even in her writ petition that it has not fulfilled such legal duty and liability. Hence, writ petition should be revoked. Affidavit furnished on behalf of Ministry of Federal Affairs and Local Development reads as above.

State apparatuses fulfill their duties by the Constitution, Act and law and Rule of the state. The opponents' rights protected by the Constitution, Act, law and Rule of the country have not been breached by this Office of the Ward No. 35 of Metropolitan City. The Ward Office is fulfilling its liability and duty, acts to be accomplished by remaining within the circumference of the Act and law within its ward area. The petitioner has not applied to obtain recommendation for citizenship; hence, the description that recommendation has not been made is straightly false. Though the writ petitioner said that Samin Thapa was born in K.M.C., Ward No. 35 on date 2050/5/11 (August 27, 1993), it is not seen that registration has happened and made in this Ward Office regarding this either. The writ petition, in which these actors have made this Ward Office of Ward No. 35 of Kathmandu Metropolitan City an opponent without furnishing any application and information to this Ward Office as per law, by hiding the true and factual description having no liability, should be revoked. Affidavit furnished on behalf of Kathmandu Metropolitan City, Ward No. 35 reads as above.

Documents attached to the document file along with the present petition that has been submitted before this Bench for the purpose of decision upon being inducted to the cause lists of the weekly and daily cases as per rule have been studied. Learned advocate, Ms. Sushma Gautam, present on behalf of the petitioners, presented the pleading stating that it appeared that there was no dispute in the fact that this Samin Thapa was a citizen of Nepal by descent as per the provision of Clause 3 (1) of Nepal Citizen Act, 2063. There was a provision that the person whose father and mother's whereabouts were not

traced could obtain citizenship as per the process of Rule 3 (3) of Nepal Citizenship Rule, 2063. However, this petitioner was not provided with the citizenship as per the application furnished by fulfilling such process to obtain citizenship certificate. Thus, this petitioner had to be deprived of the legal right to be obtained as a citizen, including the constitutional right to obtain citizenship. The aforementioned act of the opponents has been against the Constitution of Nepal and Citizenship Act, and Rule, 2063 including international documents having Nepal a party; hence, necessary order should be issued on the names of the opponents to provide the petitioner, Samin Thapa, with the citizenship by mother's name.

Learned joint attorney present on behalf of the Government of Nepal, Mr. Sanjiv Raj Regmi, presented the pleading stating that the Government of Nepal had not discriminated in providing citizenship to Nepalese citizens like the petitioner. The description of the opponent that citizenship was not provided by mother's name was false. These writ petitioners had the duty to submit application along with the documents to be submitted while obtaining citizenship. Without fulfilling the process, it was not right to say that citizenship certificate was not provided; hence, the writ petition having the description that citizenship was not provided should be revoked.

Upon considering including the pleading points of the learned legal professionals, by studying the documents attached to the document file, is order supposed to be issued as per petition claim or not? It appears that decision is supposed to be made on this issue.

Considering towards the decision, main petition claim appears to have the description that she, the petitioner, was the daughter of Kopila Magar, a resident of K.D., K.M.C., Ward No. 35, Subidhanagar. Her mother was a Nepalese citizen who had obtained Nepalese citizenship certificate. As, she, the petitioner, needed citizenship, when she went to the Office of K.D., K.M.C., Ward No. 35 to obtain recommendation, she was given oral order saying that recommendation could not be provided, and when the application was furnished to District Administration Office, Kathmandu by mentioning the same description, oral order that citizenship could not be provided was given; hence, she was being deprived of her right relating to constitutional equality, right to obtain citizenship, right of higher education including my right to equality, right to nationality and my right to acquire my identity under the international law; hence, order, command including mandamus, whichever is needed, should be issued to provide citizenship certificate by descent by mother's name.

Upon looking into the documents attached to the petition, it is justified from the character certificate of Samin Thapa and mark sheet of S. L. C. and from the form filled up by her on date 2070/3/9 (June 23, 2013 A.D.) to obtain Nepalese citizenship certificate that Kopila Thapa is the mother of Samin Thapa. From the replica copy attached to the document file along with the petition, it is seen that Kopila Magar, of the petitioners, obtained citizenship certificate of C. C. No. 11177/053 on date 2053/8/4 (November 19, 1996 A.D.) from District Administration Office, Chitwan. From the photocopy of the certificate of the registration of migration, it is seen that she came to K.M.C., Ward No. 35 upon migrating from Bharatpur Municipality on date 2052/10/10 (January 24, 1996 A.D.). Upon looking into the character certificate of Samin Thapa, it is seen that date 2051/5/11 (August 27, 1994 A.D.) is her date of birth.

By Article 15 of Universal Declaration on Human Rights (UDHR), 1948, everybody has the right of citizenship. There is the provision that nobody shall be deprived of the right of citizenship gratuitously. Similarly, by Article 24 of International Covenant on Civic and Political Rights (ICCPR), 1966, every child shall be registered immediately after birth and given him name. There is the provision that child shall have the right to acquire nationality. Similarly, by Article 9 (2) of the Convention on Elimination of all forms of Discrimination Against Women (CEDAW), it is mentioned that party states shall manage to provide right to women as equal as to men, as well as in Article 7 of Convention on the Rights of Children (CRC), it is mentioned that children shall be registered immediately after birth and that children shall have the right of their nationality after birth.

Upon looking into our Constitutional provision regarding citizenship, in section (B) of Sub-Article 2 of Article 8 of the Interim Constitution of Nepal, 2063, provision is seen to have been made that if “father or mother” of a person was a Nepalese citizen at the time of his/her birth, such person shall be a citizen of Nepal. Continuity of similar kind of provision is in Sub-article 2 (B) of Article 11 of the Constitution of Nepal. In Sub-clause (1) of Clause 3 of Citizenship Act, 2063 formulated to implement the provision relating to Nepal citizenship remained in Constitution, provision is seen to have been made that if “father or mother” was a citizen of Nepal at the time of his/her birth, such person shall be the citizen of Nepal by descent. It is seen that since the phrase “father or mother” is used in the Constitution and Citizenship Act, if any one of father or mother is a Nepalese citizen, his/her children can obtain Nepalese citizenship certificate after they reach 16 years of age. Obtaining citizenship through whose name of father or mother is a matter of the choice

to be made by the person concerned. Condition is that this Court has also accepted this matter (N.L.M. 2066, D.No. 8175, P. 1014)

So far as the issue that father is not traced is concerned, it is not right to say that citizenship cannot be obtained by mother’s name simply because the father is not traced. Upon looking into Sub-article (3) of Article 8 of the Interim Constitution of Nepal and in the relativity of the provision of article 11 (4) of the Constitution of Nepal, even in connection to the person who is found within Nepal and whose father or mother has not been traced, there appears the provision that he/she can obtain the citizenship by descent until his/her father or mother is traced, whereas, in Article 11 (5), provision appears that the person who was born to a citizen mother of Nepal, who is residing in Nepal and whose father could not be identified, can obtain citizen by descent.

Substantially, the citizenship certificate identifies a particular person as a citizen of a particular country. Political right cannot be used without being a citizen. Citizenship certificate is very essential to use political and economic rights and to identify as a citizen. State provides its citizens with various fundamental rights such as using fundamental rights, acquiring employment, taking up public post, using political right, receiving social security and casting votes etc. Political right is not obtained by the person other than citizen. Citizenship is an extremely sensitive issue linked with the personal and national identity of a person; hence, in the condition that she is substantially seen to be a citizen, it is unjust to put into trouble by posing tiny hurdle of procedures.

Provision has been made in Article 18 of the Constitution of Nepal regarding the right to equality. The right of Article 18 is a fundamental right to be obtained by all the citizens without discrimination. In Article 18 (1), it is guaranteed that all citizens shall be equal before law and nobody shall be deprived of the equal protection of law. Similarly, the matter that nobody shall be discriminated based on gender has been mentioned in Article 18 (2). In addition to this, in Sub-article (1) of Article 38, provision has been made that every woman shall have the equal lineage right without gender-based discrimination. Successor of the lineage and the right of identity based on this also fall within equal lineage right. However, present petition was filed when the Interim Constitution of Nepal was effective. However, here seem no ground and reason that the rights guaranteed by the new Constitution or the Constitution of Nepal shall not be obtained by the opponents.

In the writ petition having petitioner including Sabina Damai versus the Government of Nepal

(N.L.M. 2067 Number 2 D.No. 8557 P. 247), mandamus is seen to have been issued by this Court on the name of District Administration Office to provide citizenship by mother's name. After that, it is seen from the description of the affidavit furnished on behalf of the Office of the Prime Minister and the Council of Ministers that through the letter of the date of 2068/3/6 (June 20, 2011 A.D.), it was gone in writing to the Ministry of Home Affairs for the sake of the implementation of the aforementioned order; and through the letter of the date of 2068/5/5 (August 22, 2011 A.D), the Ministry of Home Affairs circulated to all the District Administration Offices and the bodies concerned. Likewise, in the writ petitions having the petitioner including Laxmi Lama versus Office of the Prime Minister and the Council of Ministers 070-WO-0817 (Decision date 2073/5/13 (August 29, 2016 A.D.), having the petitioner Prashant Bishwas versus District Administration Office, Sunsari 071-WO-1076 (Decision date 2073/5/13, August 29, 2016 A.D.) also mandamus order is seen to have been issued by this Court on the names of the opponents to provide citizenship by mother's name. Thus, the matter that citizenship can be obtained through citizen mother is seen to have been established before this by this Court. Due to the demand made by the petitioner to obtain citizenship by mother's name, it is seen that the matter where the father has gone or what has happened is not relevant, and it is seen that application to obtain citizenship certificate cannot be rejected or recommendation

regarding this cannot be refused to be provided with by raising the issue of father's identity. Despite having constitutional and legal provision to obtain citizenship by mother's name, it is not just to deprive the petitioner of the citizenship.

Hence, from the ground and reason analyzed above, there is no dispute that Kopila Magar, the mother of the petitioner, Samin Thapa is a Nepalese citizen, and Samin Thapa is seen to have been born in Nepal from Nepalese citizen, Kopila Magar; hence, it is decided that mandamus order shall be issued on the name of opponent Ward Office to provide recommendation if the petitioner, Samin Thapa, demand recommendation by submitting mother's citizenship, and on the name of District Administration Office, Kathmandu to provide citizenship by mother's name as per law if application is furnished including necessary documents. By providing information of the this order to the respondents, submit the document to the record section by striking off the record of the case file of the present case, by doing the document file as per rule.

Justice

I am with the said opinion.

Justice

Bench Officer: Vidhya Raj Poudel

Computer Setting: Uttar Man Rai

2073/08/27/02 (Monday, 12th December, 2016)



Magh 10, 2073 (23rd January, 2017)

Supreme Court

Division Bench

Honorable Justice Dr. Aananda Mohan Bhattarai

Honorable Justice Anil Kumar Sinha

Order

071-WO-0033

Subject: Mandamus

Aaditya Gupta , son of Gopesh Chandra Gupta and Mrs. Sarita Pradhan Gupta, a resident of ward No. 7 previously Jorpati VDC currently Gokarneshwor Municipality ward No. 15 of Kathmandu district1 Applicant

Vs.

Nepal Government Ministry of Home, Singhadurbar, Kathmandu1
 District Administration Office, Babarmahal Kathmandu1
 Office of Village Development Committee, Jorpati1
 Chief District Officer, District Administration Office, Kathmandu1
 Secretary, Office of Jorpati Village Development Committee, Kathmandu1 Opponent

Brief fact and order of the present writ petition that has been filed in this Court upon being fallen under the jurisdiction of this Court as per Article 107 (2) of the Interim Constitution of Nepal, 2063 have been as follows:

My mother, Sarita Pradhan Gupta, obtained Nepalese citizenship of No. 8489 by descent from the then District Office, Kathmandu on date 2048/8/25 (December 11, 1991 A.D.). My father, an Indian citizen, Gopesh Chandra Gupta, was residing in Nepal for a longtime, got married to my mother on date 2050/8/7 (November 22, 1993 A.D.) and I was born on date 2051/12/26 (April 09, 1995 A.D.). By registering that birth, I obtained the birth registration certificate from the Office of Jorpati V.D.C. on date 2055/10/05 (January 19, 1999 A.D.), and getting admission at a school in Kathmandu on that ground, I have completed studies and obtained certificate. Similarly, my mother got including me a minor identity card made from District Administration Office, Kathmandu on date 2059/01/30 (May 13, 2002 A.D.), and me and my younger sister's relationship with my parents was also verified on date 2060/05/01 (August 18, 2003 A.D.) in Jorpati V.D.C. I obtained Nepalese passport of No. 3585919 from the opponent

District Administration Office on 2060/03/03(17th June, 2003) on the ground of the aforementioned documents. I have not yet obtained citizenship of Nepal nor that of India, the country where father was born. As I was born in Nepal from a Nepali citizen mother, I do not want to obtain Indian citizenship. Right to obtain citizenship conferred to me by including the Articles 8 (2) (B), 8 (7) of the Interim Constitution of Nepal, 2063, as per the provision made by Clause 5 (2) (3) of Nepal Citizenship Act, 2063 which was made for the sake of guaranteeing the right of freedom and equality conferred by Articles 12 (2) (D) (E) (F), 13 (1) (2) (3), I have been going for the last 6/7 years to obtain citizenship, but I have been deprived of the right to obtain citizenship because the opponent Office of the V.D.C. has not provided recommendation and the District Administration Office has not given order, directives for the sake of recommendation. In the situation that I am qualified to obtain Nepalese citizenship as per the Constitution and law, despite continuous contact made from 2064 (2007/08 A.D.) until now, the opponents are procrastinating; I should be provided Nepalese citizenship certificate by issuing order command note including mandamus, whichever is needed, on the names of the opponents

to provide Nepalese citizenship certificate by immediately initiating process regarding which of the descent or naturalized citizenship is to be obtained based on the document evidence. Writ petition claim reads as above.

District Administration Office has the right to provide citizenship certificate adopting the process as per Citizenship Act, 2063 upon looking into whether or not the necessary document is sufficient if any person goes to the District Administration Office concerned upon being recommended by the V.D.C. concerned as per Local Self -governance Act, 2055 and Rule 2056 regarding obtaining the Nepalese citizenship. In the condition that the petitioner has not yet started the initial process such as bringing recommendation of the V.D.C., it is not congruent to law to say that District Administration Office has not provided citizenship, and there is no ground to make this Ministry an opponent; hence, writ petition should be revoked. Affidavit of the Ministry of Home Affairs reads as above.

In the condition that the documents to be furnished have not been submitted, the writ petition filed by making this Office an opponent upon mentioning false description stating that procrastination was done to provide citizenship should be revoked. Affidavit of District Administration Office and including the Chief District Officer, Basanta Raj Gautam, in connection him, reads as above.

Condition does not exist that the opponent has furnished, upon making contact, to the Office of the Jorpati V.D.C. for the sake of recommendation as per law. This V.D.C. Office does not know anything what, how he has frequently gone for the sake of citizenship since the past. It is not clear whether he wants to obtain Nepalese citizenship by descent or by naturalization either. If application is brought by making clear regarding this, recommendation shall be made; hence, writ petition should be revoked. Separate affidavits, of the same congruence, of the Jorpati V.D.C. and V.D.C. Secretary of the same read as above.

In the present case that has been submitted before the Bench upon being inducted to the cause list as per rule, learned advocate, Jay Lal Bhandari, present on behalf of the petitioner, pleaded that in the condition that the mother of this defendant was a Nepalese citizen and this petitioner was born in Nepal and residing in Nepal for a long time, and he was yet to obtain foreign citizenship, he should obtain the naturalized citizenship of Nepal as per the Constitution of Nepal and Citizenship Act.

However, representative is not seen to have come from the Office of the Attorney General to plead on behalf of the opponents.

Upon hearing including the pleading of the legal

professional present on behalf of the petitioner, by looking into the document file, it is supposed to come to a decision on whether it is right or not to issue order as per claim in the present case.

While considering towards the decision, in this, there is the writ petition claim that his father, an Indian citizen, Gopesh Chandra Gupta, was living in Nepal for a long time, got married to mother on date 2050/8/7 (November 22, 1993 A.D.), he was born on date 2051/12/26 (April 9, 1995 A.D.), and its birth registration certificate was obtained from the Office of the Jorpati V.D.C., and based on this he had completed studies upon being admitted to school in Kathmandu and got certificate. Similarly, minor identity card of including mine, relationship verification of his and his younger sister's with his parents were obtained from the office of Jorpati V.D.C. and he had also obtained Nepalese passport of No. 3585919 from the opponents, District Administration Office. He had not yet obtained the citizenship certificate of the country, India, where his father was born. Hence, as per the provision made by Clause 5 (2) (3) of Nepal Citizenship Act, 2063, he was frequently going to obtain citizenship for the last 6/7 years, but the Office of the V.D.C. did not provide recommendation and the District Administration Office did not give order, directives for the sake of recommendation; hence, he was deprived of the right to obtain citizenship; hence, order or command note including mandamus, whichever is needed, should be issued on the names of the opponents to provide Nepalese citizenship certificate by immediately initiating process on which of the descent or naturalized certificate was to be obtained, affidavit is found to have been that if a person went to District Administration Office to obtain Nepalese citizenship upon bringing recommendation from the V.D.C. concerned as per law, District Administration Office would have the right to provide citizenship certificate; in the condition that the petitioner did not initiate the process such as bringing recommendation of the V.D.C. it was not congruent to law to say that the District Administration Office did not provide the citizenship. Similarly, affidavit of District Administration Office, Kathmandu and in connection to including him, Basanta Raj Gautam, the Chief District Officer, is seen to have been that in the condition of not submitting the documents to be furnished for the sake of naturalized citizenship, it was not right to say that procrastination was done to provide citizenship; hence, the writ petition should be revoked. Affidavit of the Jorpati V.D.C. and the Secretary of the same is seen to have been that the petitioner had not furnished the application, by making contact, to the Office of the Jorpati V.D.C. as per law.

Upon observing the petition and description of the affidavits of the opponents, it is clear that this petitioner, Aditya Gupta, has not obtained Nepalese citizenship certificate.

Now, it is supposed to be considered regarding whether this petitioner can or cannot obtain the citizenship of Nepal as per the Constitution of Nepal. From the replica copy of birth registration certificate of this petitioner and his minor identity card attached to the petition, it is seen that this petitioner, Aditya Gupta, was the son of Sarita Gupta and he was born on 2051/12/16 (March 30, 1995 A.D.). Upon looking into the marriage registration certificate submitted along with the petition, it is seen that his mother, Sarita Pradhan, was married to an Indian citizen, Gopesh Chandra Gupta, on date 2050/8/7 (November 22, 1993 A.D.). From the replica copy of the citizenship certificate of this Sarita Pradhan, it is clear that the petitioner's mother, this Sarita Gupta, was born on date 2026/3/15 (June 29, 1969 A.D.) and obtained Nepalese citizenship certificate on 2042/8/25 (December 10, 1985 A.D.). On the ground that Nepalese citizen, Sarita Pradhan, is his mother, this petitioner is seen to have had the relationship verified and obtained Nepalese passport as well, on 17 June 2007.

Thus, upon looking into the documents attached to the document file submitted by the petitioner, it is clear that this petitioner is the son of a foreign father, Indian citizen, Gopesh Chandra Gupta and Nepalese citizen mother, Sarita Pradhan. This petitioner is seen to have been born on date 2051/12/26 (April 9, 1995 A.D.) at Maternity Hospital, Kathmandu, as well as studied in Nepal upon residing for a long time. It is found to have been mentioned in the petition that he has not yet obtained citizenship of another country including the country India where his the father has nationality.

Upon looking into our constitutional provision regarding what kind of person can obtain what kind of citizenship of Nepal or what kinds of conditions should be fulfilled to obtain what kind of citizenship in Nepal, provision is found to have been in Sub-article (7) of Article 8 of the Interim Constitution of Nepal, 2063, "Despite whatever matter has been written elsewhere, in connection to the person who is born from Nepalese citizen mother who is married to a foreign citizen, if he/she has permanent domicile in Nepal and if he/she has not obtained the citizenship of foreign country on the ground of father's citizenship, he/she shall obtain naturalized citizenship of Nepal as per prevailing law. The same provision has been retained in Sub-article (7) of Article 11 of the present Constitution of Nepal. Making provision in Sub-clause (1) of Clause 3 of Nepal Citizenship Act, 2063, which was made to

implement the constitutional provision regarding citizenship, that "if father or mother of a person was a citizen of Nepal at the time of his/her birth, he/she shall be a citizen of Nepal;" provision is found to have been made in Sub-clause (2) that "despite whatever has been written in Sub-clause (1), in connection to the children born from a Nepalese citizen woman who has married to a foreign citizen, it shall be as per Sub-clause (2) of Clause 5." In Clause 5 of the same Act, there is the provision regarding acquisition of naturalized Nepalese citizenship. Provision is found in Sub-clause (2) of that Clause 5, that "in connection to a child born from Nepalese citizen woman who is married to a foreign citizen, if he/she has permanent domicile in Nepal upon being born in Nepal and if he/she has not obtained the citizenship of foreign country on the ground of his/her father's citizenship, he/she shall be provided with naturalized citizenship."

Upon looking into these constitutional and legal provisions, naturalized citizenship can be provided to the children, who have permanent domicile in Nepal upon being born in Nepal from the Nepalese citizen woman, who is married to a foreign citizen, if they have not obtained citizenship of the foreign country based on the father's citizenship. In the context of the present writ petition, this petitioner is seen to have been permanently residing in Nepal by studying in Nepal after being born in Nepal from Nepalese woman, who was married to foreign citizen. Moreover, he is not seen to have obtained citizenship of India by father's citizenship either. In this condition, it is seen that he can obtain naturalized citizenship according to Sub-article (7) of Article 8 of the Interim Constitution of Nepal, 2063, Sub-article (7) of Article 11 of the Constitution of Nepal and including Clause 5 (2) of Nepal Citizenship Act, 2063. Thus, it cannot be said that this petitioner, who has got the qualification and conditions to obtain naturalized citizenship as per the Constitution and Citizenship Act, cannot obtain citizenship just on the ground that his father is a foreign citizen. The opponents are not even seen to have been able to say in anywhere in their affidavits that there existed or happened any condition of being unable to obtain citizenship.

To obtain citizenship, as per mentioned in the law, from the country, of which his/her mother or father has had citizenship or from the country in which they have residence or from the country in which they have nationality, is a matter of basic right of any person. Citizenship certificate identifies a person of which country he belongs, and makes able to use the matters of rights to be obtained as per the law of that country. Without citizenship, a person has to be deprived of other facilities and rights including basic civic and political rights under his/her human

rights provided by advanced public welfare country. Hence, citizenship is a very sensitive matter linked with personal and national identity of a person; hence, no person shall have to be rendered in the condition of without citizenship. Realizing this sensitiveness of the citizenship, provision of naturalized citizenship has been made, for the children born upon the marriage held by a citizen man or woman of one country with a woman or man of another country, to obtain from the country in which they have their permanent residence of which any one of the father or mother has his/her citizenship.

Upon propounding precedent by this Court on mandamus order having Sabina Damai vs. the Government of Nepal and including on the disputes having similar as this that the Constitution has clearly stated “father or mother” regarding obtaining citizenship; hence, even if only one of the father or the mother is a citizen of Nepal, such person can obtain the citizen of Nepal (N.L.M. 2068, D.No. 8557, Number 2, P. 247), mandamus is seen to have been issued in the name of District Administration Office to provide citizenship by mother’s name. Similarly, provision has been made in Sub-article (1) of Article 38 of the present Constitution under the rights of women that every woman shall have equal lineage right without gender-based discrimination. Successor of the lineage and equal right of identity based on this also fall within the equal lineage right. On this ground also, it is seen that the mother of this petitioner can make the citizenship of the successor of her lineage by her name and can have her son identified based on her. While depriving the petitioner of obtaining citizenship by mother’s name, improper prevention shall be put in the provision of the right of the petitioner of obtaining citizenship by mother’s name, too which is remained as his constitutional right, fundamental right of the right of equality as per then Interim Constitution of Nepal, 2063 and present Constitution of Nepal in Article 11 of the then Constitution and Article 18 of the present Constitution and as well as the petitioner’s mother’s right of the mother under right of women conferred by Sub-clause (1) of Article 38 of the present Constitution of Nepal that every woman shall have equal lineage right without gender-based discrimination. In this situation, it is seen that necessary and appropriate order shall have to be issued for the sake of prevailing the aforementioned rights of the petitioner.

In the present writ petition, this petitioner is found to have mentioned that he was continuously trying from the year 2064 B.S. (2007/08 A.D.) for the sake of obtaining citizenship, but the V.D.C. concerned was procrastinating without providing

recommendation, District Administration was not giving order to provide recommendation and was not doing any meaningful pressure regarding providing citizenship; hence, he had to be deprived of the citizenship. Condition is clearly seen that on the ground of the document evidence, analyzed above, submitted by the petitioner, this petitioner shall obtain naturalized citizenship by mother’s name as per the Constitution of Nepal and prevailing law relating to citizenship; hence, the V.D.C. concerned shall have to provide recommendation to him for the sake of acquiring citizenship and the District Administration shall have to provide citizenship certificate based on that. It is not right to refuse and procrastinate to do the act of providing citizenship and the act related to its process.

It is seen that this petitioner, Aditya Gupta, can obtain naturalized citizenship of Nepal, in this condition, it is not right to refuse to provide citizenship to him when he comes by fulfilling the necessary documents and process as per law. Upon looking into regarding the aforementioned process to be fulfilled to obtain citizenship, it is seen in Sub-clause (3) of Clause 5 of Nepal Citizenship Act, 2063 that the person, who wants to obtain naturalized citizenship, shall have to furnish application before the prescribed official by attaching following documents.

- a) Replica copy of the Nepalese citizenship of the mother,
- b) Recommendation of the village development committee or municipality concerned, which exposes the description of residing permanently upon being born in Nepal,
- c) Proof of the citizenship of the any foreign country not obtained based on the father’s citizenship.

As per the aforementioned provision, Jorpati V.D.C., which is the address of the mother of the petitioner and where there is permanent residence of the petitioner, shall have to provide this petitioner with the recommendation that his permanent residence is in the aforementioned V.D.C., and if there is that recommendation, the replica copy of the citizenship of his mother, a situation that he has not obtained the citizenship of India based on the citizenship of father, and if he clearly writes these things in the application, it is seen that District administration Office, Kathmandu shall have to provide the naturalized citizenship certificate to this petitioner upon fulfilling necessary process.

Hence, from the analysis made above, it is justified in the present petition that Sarita Pradhan, the mother of the petitioner, Aditya Gupta, was a Nepalese citizen at the time of his birth, upon obtaining

Nepalese citizenship, and upon being born in Nepal, this petitioner has been permanently residing in Nepal; and there is not condition that this petitioner has obtained citizenship from his father's country of citizenship, India either; hence, it is seen that he shall obtain naturalized citizenship of Nepal. Hence, it is decided that mandamus order shall be issued on the name of the opponent previously the Office of the Village Development Committee (presently the Office of the Ward No. 15 of Gokarneshwar Municipality) as well as on the name of the Secretary of the same to provide recommendation to him for the sake of obtaining citizenship certificate and on the name of the Government of Nepal, Ministry of Home Affairs and District Administration Office,

Babarmahal to provide citizenship certificate to him based on documents including the aforementioned recommendation by fulfilling necessary process as per law. Provide the information of the order to the opponents and submit the document file to the record section by striking off the record of the case file of the case.

Justice

I am with the said opinion.

Justice

Bench Officer:Yadu Raj Sharma

Computer Setting: Sijam Regmi

2073/10/10/02 (Monday, 23rd January, 2017)



Jestha 8, 2074 (18th May, 2017)

Supreme Court, Division Bench
Honorable Justice Deepak Kumar Karki
Honorable Justice Prakash Man Singh Raut

Order

072-WO-0629

Case: Certiorari with Mandamus

Deepti Gurung, authorized representative of Neha Gurung and for herself, a resident of ward No. 3 of Lalitpur Sub-Metropolitan City of Lalitpur district1 Applicant

Vs.

Government of Nepal, Office of Prime Minister and Council of Ministers, Singhadurbar, Kathmandu1

Government of Nepal, Ministry of Home Affairs, Singhadurbar, Kathmandu1

Government of Nepal, District Administration Office, Manbhawan, Lalitpur1

Office of the Ward No. 3 of Lalitpur Sub-Metropolitan City, Pulchowk, Lalitpur1 Defendant

The facts and the order of/on this writ petition filed under the jurisdiction of this court as per Article 32, 107(2) of the Constitution of Nepal, 2072 (2015) are as follows:-

Of the petitioner, I Deepti Gurung and my daughter Neha Gurung have been living in ward No.3 of Lalitpur Sub-Metropolitan City of Lalitpur district. My daughter Neha Gurung has passed 10+2 and has been studying at National Law College for her higher study. She was born on 2051/01/03 (16 April 1994) in the house at ward No. 3 of Lalitpur Sub-Metropolitan City of Lalitpur district. The Higher Secondary School wherein my daughter has been studying in 10+2 has sought the birth registration and citizenship certificate and for the birth registration and citizenship of my daughter Neha the office of Lalitpur Sub-Metropolitan City of Lalitpur district was attended with the application but the application was denied to register. Attaching my citizenship along with the aforementioned application, I had mentioned clearly that I am the single mother of my daughter. Birth of the daughter Neha Gurung was registered on Thursday, 31 Ashadh 2072 B.S. (16 July 2015), but birth was registered by writing “resident of Mr. THEGAN NABHAËKO [address not traced]” in the third line of the family record form of the birth registration certificate, and writing “daughter of

Mr. Thegan Nabhaeko” in the third line of family record form of English version. After the registration of birth, despite frequently going to the Office of the Ward No. 3 of Lalitpur Sub-Metropolitan City since the date 2072/4/1 (17 July 2015) until recently i.e., till the date, Wednesday, 2072/11/5 (17 February 2016) continuously requesting to provide “recommendation for citizenship”, recommendation was not provided for citizenship. Meanwhile, I registered another application, too, to obtain information on what grounds and reasons the action upon the application to obtain recommendation to make citizenship certificate did not move forward. Thus, after the recommendation could not be obtained from the Office of Ward No. 3, we, mother and daughter, went to the Office of the Chief District Officer, Manbhawan, Lalitpur, along with the application; we received oral reply in scolding language stating that daughter’s citizenship would not be made without having father’s citizenship; hence, since there is no alternative way, we have been present before this esteemed Court, taking this writ petition.

We, the writ petitioners, are completely Nepalese citizens. Of the petitioners, the father of mine, Neha Gurung, has not been traced and mother is a Nepalese citizen. The Constitution and law have made clear provision that if either of the father

or mother is a Nepalese citizen, his/her child shall be the citizen of Nepal; however, because the petitioner's father has not been identified, I have been deprived of obtaining the citizenship certificate of Nepal, and due to the oral order of the opponents, condition has emerged to expunge my identity. Of the petitioners, I, Deepti Gurung, have been providing patronage, being the single mother of the petitioner daughter, Neha Gurung. Even I, the mother of the daughter, have not been able to identify the daughters' father, too. As per the constitutional and legal provision made to give identity by providing citizenship to her children through the mother, my daughter should be provided with citizenship certificate by descent through my name, the mother, Deepti Gurung. Of the petitioners, I, Neha Gurung, was given birth, nurtured, raised, educated and provided health care to me by my mother, Deepti Gurung. I have neither heard my father's name nor seen him; hence, as per the constitutional and legal provisions, my mother, Deepti Gurung, has the right to give my identity through her name, and my right to get identity through my mother is ensured; therefore, it is requested to issue order of mandamus including other appropriate orders that I should be provided with citizenship through my mother's name.

The clause stating "resident of... address not traced" in the third line of family record form and stating "daughter of Mr. Thegan Nabhaeko [not identified]" in the third line of Family Record Form of English version in my birth registration certificate issued by the Office of Ward No. 3 of Lalitpur Sub-Metropolitan City on date 31st Ashadh 2072 B.S. (16 July 16 2015) should be revoked with the order of certiorari. Later, while showing citizenship certificate, the situation to feel ashamed will be created due to the words "father has not been identified and traced" in the citizenship certificate to be issued on my name; hence, issue the order of mandamus and other required appropriate orders in the names of the opponents, stating that such words should not be kept in the citizenship certificate. There are hundreds of thousands of Nepalese across Nepal who have been victimized upon having no citizenship like me, issuing mandamus so as to interpret in connection to theirs as well, order should also be issued, on the names of all the 75 District Administration Offices through the Ministry of Home Affairs and of all V.D.C. Offices, Offices of Metropolitan Cities, Sub-metropolitan Cities and Municipalities and their all Ward Offices through the Ministry of Federal Affairs and Local Development to issue circulate for the implementation of the aforementioned order. Writ petition reads as above.

The order of this court was to furnish show cause from the opponents as per rule as well as to submit

the case with priority for hearing considering the petitioners are women and the disputed issue is important like citizenship.

The petition stating that some texts mentioned by the Office of Ward No. 3 of Lalitpur Sub-Metropolitan City while registering the birth on the ground of mother's citizenship as no father's citizenship was available in the family record form of the certificate should be revoked, in Clause 3 of Birth, Death and Other Personal Event (Registration) Act, 2033 (1976), for the purpose of registering personal events, as per the provision that the Government of Nepal can appoint or designate one registrar and local registrars in each Village Development Committee or Municipality area so as to remain under him/her, the work of the registration of personal events is being done after the registrar and local registrars have been designated by the Government of Nepal. Regarding the permission to correct the description of birth, death and other personal events which were registered, and change the name which was registered, the right has been conferred to the registrar. Despite having the provision of alternative remedy to furnish complaint in front of the registrar regarding the issues pleaded by the petitioner, the petitioner's writ petition filed without adopting the aforementioned way is against the Doctrine of alternative remedy, hence is revocable in prima facie. Regarding the petition pleading to obtain citizenship through mother's name by descent, the Constitution and other prevailing laws of Nepal have made provisions regarding citizenship of Nepal to be obtained through mother's name by the person who was born in Nepal from the mother who is a citizen of Nepal, and evidence and documents to be attached with the application to be furnished before the authorized official for the sake of obtaining citizenship; hence, ground and reason is not seen to make this Office an opponent regarding obtaining citizenship through mother's name; hence, present writ petition should be revoked. Written reply of the Office of the Prime Minister and the Council of Ministers reads as above.

If the petitioners furnish application before the Chief District Officer concerned upon taking recommendation of the local body concern from the place of permanent residence, action on this shall be carried out by the District Administration Office concerned. Preliminary responsibility to fulfill necessary evidence and documents for the sake of obtaining citizenship rests upon the petitioners; hence, if District Administration Office is visited along with the documents determined by act and law as to be submitted by fulfilling the procedures prescribed, all the acts and actions shall be done from there; hence, in connection to this Ministry, the writ petition making this Ministry an opponent

should be revoked. Written reply of the Government of Nepal, the Ministry of Home Affairs reads as above.

In order to obtain the citizenship certificate of Nepal as per the claim of the writ petitioner, as per Sub-clause 1 of Clause 3 of Nepal Citizenship Act, 2063 (2006), if a person whose father or mother was a citizen of Nepal at his or her birth such person shall be the citizen of Nepal by descent. If a person above 16 years of age wishes for the Nepalese citizenship certificate, required documents, Nepalese citizenship certificate of father or mother or the relative of descent within three generations, recommendation provided by the local body concerned mentioning place of birth and relationship or birth registration certificate, citizenship certificate of the relative within three generations have to be submitted before the prescribed official, he/she shall have to furnish application before the prescribed official by attaching documents along with attested letter of relationship with the aforementioned relative. On the issue raised by the petitioner, responsibility to attend in this Office along with the aforementioned documents by filling up the prescribed form and to submit the evidentiary documents prescribed by law rests upon the petitioner herself; hence, she is not seen to have been present in this Office along with the evidentiary documents as per that; in this condition, the writ petition filed by mentioning false description should be revoked. Written reply of the District Administration Office, Lalitpur reads as above.

In the writ petition of 070-WO-932, filed in connection to Nikita Gurung by Deepti Gurung, of the opponent writ petitioners, mandamus was issued in the decision made by this esteemed Court on date 2071/1/26 (9 May 2014), stating that birth should be registered. No matter was mentioned in the aforementioned petition regarding Neha Gurung of these writ petitioners. Only the name of Nikita Gurung has been mentioned in the aforementioned writ petition, whereas, only the name of Neha Gurung is found to have been mentioned in the present case. It is seen from the register book of this Office that births of two daughters of the writ petitioner, Deepti Gurung, have taken place, whereas, this matter is justified even by the separate petitions of the petitioners; in this circumstances, is not appropriate to issue the order including mandamus as per mentioned in the writ petition in the name of this Office, based on the statement of the petitioner. If the father of children is not traced, they must not be rendered without citizenship or as stateless, but this Office can recommend for citizenship only being under the ambit of law. Condition does not

remain for this Office to be able to recommend against the provisions of the act and rules. The process of obtaining citizenship has been clearly mentioned by the Citizenship Rules, 2063 (2006). Without following the process of the provisions of the Rules (not adopting the procedures), writ petition has been filed directly entering into the writ jurisdiction. On the issue of dispute like that of the writ petitioner, recommendation cannot be straightforwardly made by this Office. If the Chief District Officer feels suspicion upon the procedures adopted while recommending as per rule, the rule has made provision of the right to make necessary enquiry by asking them to be present in the Office again; hence, no obstruction has been posed against the works of the opponents on behalf of this Office; hence, writ should not be issued in the name of this Office as per the writ petitioner claimed. In case the Chief District Officer makes queries as per the provisions in the Citizenship Act and Rules, there is a situation to submit field affidavit as per existing laws; hence, the act of depriving citizenship as mentioned in the writ petition has not been committed by this Office; hence, present writ petition should be revoked. Written reply of Lalitpur Sub-metropolitan City, Ward No. 3 reads as above.

In the present writ petition that has been submitted to this Bench by being inducted to daily cause list as per rule, learned advocates Ms. Meera Dhungana and Ms. Shushama Gautam pleaded on behalf of the petitioner, stating that citizenship is very important fundamental document of a person. It is a compulsory document to receive the benefits, rights and opportunities provided by the state. Despite being a human being naturally, the person without citizenship is rendered without rights and has to be deprived of the basic human rights as well; of the petitioners, Neha Gurung has reached in this condition, which is an issue of extremely serious, sensitive and public interest as well. Although the constitution and laws have clear provisions that if the father or mother is a Nepalese citizen, his/her child is a citizen of Nepal by descent, the petitioners Neha Gurung has been deprived of obtaining the citizenship certificate of Nepal simply because the petitioner's father has not been identified. Though the Constitution of Nepal, 2072 (2015) and Citizenship Act has ensured the right of the woman to transfer citizenship or identity to her children, the situation has been created by the official who are responsible to implement the rights in practice, are depriving the petitioner, Neha Gurung, of the right of identity, instead of implementing the aforementioned rights. Thus, of the petitioners, Deepti Gurung, being a single mother of her daughter, Neha Gurung, has been providing guardianship, and the mother of the

daughters herself has not been able to identify the father of the daughters; in this condition, as per the constitutional and legal provisions that mother can give identity by providing her children with citizenship, issue an order of mandamus and other orders whichever is needed that citizenship certificate by descent through the name of mother Deepti Gurung should be given to her daughter, Neha Gurung. Furthermore, the phrases of resident having not been traced in the third line of the family record form of birth registration certificate and “daughter of Mr. Thegan Nabhaeko” in the third line of Family Record Form of English version should be revoked by the order of certiorari and issue an order of mandamus including other orders whichever is needed in the names of opponents stating that such words must not be kept in the citizenship certificate to be issued later.

Learned joint attorney, Mr. Shyam Kumar Bhattarai, present on behalf of the opponents, the Government of Nepal, pleaded stating that if the petitioners furnished application before the Chief District Officer concerned by taking the recommendation of the local body concerned from the place where they have residence, its action would be carried out by the District Administration Office concerned. The preliminary responsibility to submit the necessary evidences and documents to acquire citizenship rests on the petitioners; hence, when the Chief District Officer makes queries along with the documents to be submitted determined by Citizenship Act and Rules by fulfilling the prescribed procedures, there is a situation to submit the field affidavit as per law; hence, the act to deprive in providing citizenship as mentioned in the writ petition has not been done; the present writ petition should be scrapped.

Now, while studying all the evidentiary documents attached to the case file as well as upon hearing the pleadings presented on behalf of the writ petitioners and the opponents, the decision has to be made on the present writ petition whether the order is to be issued or not as claimed in the writ petition by the petitioners.

While considering towards the decision, main writ petition pleading is that because the mother Deepti Gurung, of the writ petitioners, is a single mother, another writ petitioner, daughter, Neha Gurung, should be provided with the citizenship by descent through mother's name, and the phrases 'resident of... address not traced' in the third line of family record form of birth registration certificate provided by the Office of Ward No. 3 of Lalitpur Sub-metropolitan City on date of 31st Ashadh 2072 (16 July 2015) and “daughter of Mr. Thegan Nabhaeko” in the third line of Family Record form No. of English version should be revoked with the

order of certiorari, and issue an order of mandamus including other orders whichever is necessary in the names of the opponents, stating that in the citizenship certificate, the words such as ‘father has not been identified and not traced’ should not be kept in the citizenship certificate to be issued later to Neha Gurung, whereas, written replies of the opponents, including the Government of Nepal, District Administration Office, Manbawan, Lalitpur is seen to have been furnished, stating that preliminary responsibility to fulfill necessary evidentiary documents rests upon the petitioners, and documents determined by Citizenship Act and Rules should be submitted by following the prescribed procedures; hence, the writ petitioner has not been deprived of providing citizenship.

While considering towards the claim of the writ petitioners that citizenship by descent should be granted through the mother's name, the provisions have been made in Article 10(1) of Constitution of Nepal that “No citizen of Nepal may be deprived of the right to obtain citizenship”, in Article 11(2)(b) that “A person whose father or mother was a citizen of Nepal at his or her birth shall be the citizen of Nepal by descent” as well as provision is seen to have been made in Article 11(5) that “A person who is born in Nepal from a woman who is a citizen of Nepal and has resided in Nepal and whose father is not traced shall be provided with the citizenship of Nepal by descent. Similarly, in Sub-clause (1) of Clause 3 of Nepal Citizenship Act, 2063 (2006), provision is seen to have been made, according to the spirit of the Constitution, stating that “If a person whose father or mother was a citizen of Nepal at his or her birth shall be a citizen of Nepal by descent.” As per this provision, any person who was born in Nepal from any one of Nepalese citizen father or mother is eligible to obtain the citizenship of Nepal. Right of the Nepalese woman has granted to confer citizenship or identity to her child by the aforementioned provision as well as it is seen that even if the father is not identified, the children who were born from the mother who is a citizen of Nepal can obtain citizenship of Nepal by descent. In the present writ petition, it has been proven from the citizenship certificate issued by the District Administration Office, Lalitpur on date 2049/6/12 (28 September 1992) that the writ petitioner mother, Deepti Gurung with citizenship certificate number 57801, is the daughter of Dhan Bahadur Gurung, Nepalese citizen, and with the birth registration certificate of writ petitioner daughter Neha Gurung provided by Lalitpur Sub-Metropolitan City, Ward No. 3 on date 2072/3/31 (16 July 2015) that these writ petitioners are Nepalese citizens. As the Constitution and laws have clear provisions that the person whose one of the father or

mother is a citizen of Nepal at his or her birth, who is residing in Nepal and whose father has not been identified, shall be provided with the citizenship of Nepal by descent and it is being clearly seen from the evidences attached to this case file that these petitioners are the Nepalese citizens who were born in Nepal from Nepalese mother, it is not just to create situation to wipe out the identity by depriving the daughter, Neha Gurung, of the petitioners, of obtaining citizenship certificate of Nepal, simply because father has not been identified.

International standard states that every child has the rights to be registered after the birth, get his or her name, and obtain nationality, which Nepal has adopted by being the party to various treaties, conventions and agreements. It is seen that Deepti Gurung, of the petitioners, being a single mother, gave birth to the petitioner Neha Gurung and has been protecting, nurturing, raising and educating as well as providing health care to her whereas the petitioner daughter Neha Gurung has not even heard the name and not seen of her father and she wants to get identity through the name of mother, Deepti Gurung. In this situation, the right to obtain citizenship through mother's name is protected for Neha Gurung. It is not seen appropriate to deprive two daughters of Deepti Gurung from obtaining citizenship despite she gave birth to them stating that the father of the daughters has not been known. Due to the reason that it is not known who the father of these daughters is, it cannot be agreed with the written replies of the opponents that they are not with clean hands and intention.

As the Constitution has provision of fundamental right that no discrimination is to be made on the basis of gender, the mother Deepti Gurung of the petitioners is a Nepali citizen as proven by her citizenship certificate, it is seen that not to issue citizenship certificate for the petitioner daughter Neha Gurung showing the reason that her father has not been traced is not only the breach of fundamental right of petitioner Neha Gurung but also of her mother petitioner Deepti Gurung. Hence, the Constitution of Nepal and Nepal Citizenship Act, 2063 have ensured their right to identity. As per the right guaranteed by the Constitution and laws to the mother to give identity to her child, it is seen that the daughter Neha Gurung shall obtain citizenship through the name of the mother, Deepti Gurung.

Right to live with dignity is an inherent right of every citizen. Since "a resident of Mr. address not traced" in the third line of the family record form and "daughter of Mr. Thegan Nabhaeko" in the third line of the Family record form of English version have been written in the of birth registration certificate provided by the Office of Ward No. 3 of Lalitpur Sub-Metropolitan City on date 2072/3/31 (16 July 2015),

giving her introduction stating as a daughter of the father not traced in the Nepalese society having patriarchal mindset, perception towards looking at the petitioner shall be different and it appears that situation shall arise to be despised and insulted; hence, it is seen that dignity of the petitioner Neha Gurung shall be harmed. As no institution or person has the right to harm in the dignity of any citizen; the description mentioned as "resident of Mr. address not traced" in the third line of family record form and "daughter of Mr. Thegan Nabhaeko" in the third line of the Family Record Form in the English version of birth registration certificate issued by the Lalitpur Sub-Metropolitan City on date 2072/3/31 (16 July 2015) is seen to be revocable.

From the writ petitions filed at different times, it is seen to have been proven that those such as the petitioners, despite being fully Nepalese citizens and in spite of their wish to obtain citizenship through mother's name, have not been getting citizenship through mother's identity due to various reasons and have rendered citizenshipless and are being victims. Regarding obtaining citizenship through mother's name, there are clear provisions made in the Constitution and Nepal Citizenship Act; furthermore, directive orders have also been issued by the Supreme Court. It is equivalent to the breach of law by the law implementation body to refuse citizenship through mother's identity in different pretexts. Hence, it is also a responsibility of the Government of Nepal, and all the concerned bodies under it, to extend support to those who wish to obtain citizenship through mother's name by fulfilling prescribed procedures as per law, therefore, it appears that their responsibilities have to be readily implemented practically.

Regarding obtaining citizenship through mother's name, decision no. 8557 published in Ne.Ka.Pa. (Nepal Kanoon Patrika) 2068 (2011) Volume 2 Page 247 in the writ petition of *Sabina Damai versus the Government of Nepal, the Office of the Prime Minister and the Council of Ministers et.al.*, the Supreme Court has issued directive order propounding precedent stating, "despite having only one of father or mother is a citizen of Nepal, such person can obtain the citizenship of Nepal," furthermore, in the Supreme Court Bulletin published on 2073 Asoj 1 (17 September 2016) Page 7 in the writ petition of *Sajda Sapkota versus the Office of the Prime Minister and the Council of Ministers et.al.*, the directive order was issued "to grant citizenship in the name of mother if the mother is a citizen of Nepal and father is not traced" and as the provision to acquire citizenship through mother has been adopted, it is the duty of the concerned authorities to provide citizenship easily without unnecessary trouble. Regarding issuance of citizenship in the case of the father is

not traced, as per the circular sent by the Ministry of Home Affairs to the Regional Administration and District Administration Offices on 2069/10/7 (20 January 2013), “Issue citizenship to the children whose paternity or maternity is not identified by the identification of the guardian so as to let it happen accordingly when father or mother is traced; by maintaining record only in the record of the office which issues citizenship certificate thus, leave blank the column of father or mother in the citizenship certificate” has been mentioned; from this also, it is the responsibility, as the petitioner claimed, of the District Administration Office to provide citizenship without mentioning father’s name and keeping father’s column blank in the family record form of birth registration certificate. As per this, it also appears that the petitioner, Neha Gurung, has legal right to obtain birth certificate and citizenship. Therefore, as the Constitution of Nepal and Nepal Citizenship Act, 2063 have ensured the right of Nepalese mother to confer her child with citizenship along with identity and the child to obtain citizenship certificate through mother’s name, the petitioner Neha Gurung cannot be deprived of her right of citizenship simply on the ground that father has not been traced. It is decided that the daughter, Neha Gurung, who wishes to make her identity through

her mother, Deepti Gurung’s name, shall obtain the citizenship certificate through her mother. Mentioning of “resident of Mr. address not traced” in the third line of family record form and “daughter of Mr. Thegan Nabhaeko” in English version of birth registration certificate issued by the Lalitpur Sub-Metropolitan City on 2072/3/31 (16 July 2015) has been seen to harm the petitioner Neha Gurung’s dignity, therefore, it has been scrapped by the order of certiorari. As claimed by the petitioner, it is decided that order of mandamus has been issued in the names of the opponents that provide citizenship certificate without mentioning “resident of Mr. address not traced” “daughter of Mr. Thegan Nabhaeko” in the column of the father’s name in the citizenship certificate. Remove the list of this writ petition from the record by providing this information to the opponents and return the case file as per rule.

Justice

I am in agreement with the opinion.

Justice

Bench Officer: Gita Shrestha

Computer Operator: Uttar Man Rai

Done on 2074/02/08/02 (Monday, 18th May, 2017)



Jestha 21, 2074 (4th June, 2017)

Supreme Court, Division Bench
Honorable Justice Gopal Parajuli
Honorable Justice Prakashman Singh Raut

Order

069-WO-1041

Subject: Mandamus et al

Sun Kumari Magar Tamang, wife of Ongud Tamang, a resident of ward No 1 of Dhankuta Municipality of Dhankuta district	1	Applicant
Vs.		
Office of Prime Minister and Council of Ministers	1	
Ministry of Home, Singhadurbar	1	
Ministry of Federal Affairs and Local Development	1	
Ministry of Law, Justice, Constituent Assembly and Parliament Affairs	1	
Ministry of Women, Children and Social Welfare	1	
District Administration Office, Dhankuta	1	
Dhankuta Municipality	1	
Ongud Tamang a resident of, ward No 1 of Dhankuta Municipality	1	Defendant

The brief facts of this case duly fallen under the jurisdiction of this Court pursuant to Articles 32 and 107(2) of the Interim Constitution of Nepal, 2007 are as follows:

I am the daughter of father late Chandra Bahadur and mother late Chandra Kumari Sinjali Magar and the wife of respondent Ongud Tamang. Both of my father and mother had been Nepali citizens. Some of my brothers have been living in Dhankuta Municipality, Ward no. 1 and some in the Ilam district. On 2068/11/15 (01.11.2011), I filled up the scheduled form for obtaining citizenship and approached to the office of Ward No.1 of the Dhankuta Municipality, the office declined to give me a recommendation for citizenship as the persons in inquiry report were told to give a negative opinion as regards my application. Hence, I met with injustice. However, in the partition case that I have filed against my husband, the Dhankuta District Court has held that I am the wife of respondent no. 8 Ongud Tamang and decided that I am eligible to receive 1/5th of the share from his property. That verdict also has been approved by the Appellate Court, Dhankuta and thus has become final. In

order to obtain my partition share as per the court's verdict, citizenship certificate is required. As I approached for recommendation to obtain one, the persons in the inquiry report were coerced and threatened to deny me recommendation. This way, even the Dhankuta Municipality meted out injustice against me. Thus, I have moved this Supreme Court with this petition.

Citizenship is a paramount document for any individual. The citizenship certificate is imperative for the citizens in enjoying the rights and privileges and realizing the opportunities granted by the State. A person denied of citizenship shall be unable even to register the vital events. He or she shall also be deprived of right to property. The individual shall be bereft of education, employment, and the right to pursue an occupation, trade or industry. A person without citizenship shall be devoid of identity as to which country's citizen he or she is. Though he or she may be human by nature, he or she shall cease to exist due to the deprivation from fundamental human rights. Many of the citizens are still bereft of citizenship. At this backdrop, I and many other persons are being deprived of citizenship and it tells

that the issue of obtaining citizenship is a grave and sensitive matter.

Part 2 of the Interim Constitution of Nepal, 2007 provides for the basic structure as regards attainment of citizenship. Article 8(2)(b) of the Constitution lays down that: In case father or mother of an individual was a Nepali citizen at the time of birth of that individual, then he or she shall be citizen of Nepal by descent. Similarly, Section 3(1) of the Nepal Citizenship Act, 2007 also has provisions consonant to the Constitution. I, the writ petitioner, have married a Nepali citizen myself. My father and mother were also citizens of Nepal. My brothers have acquired Nepali citizenship by descent. However, I have to live till now as a person without citizenship. As my parents, siblings and spouse have been Nepali citizens, I am automatically a Nepali citizen without any discord. Similarly, the proviso of Section 8(1)(a) of the Nepal Citizenship Act, 2007 shall not apply in my case. The Dhankuta Municipality has not provided me with the recommendation as per Section 8(1)(b) of the Act. The persons in inquiry report could not declare that I am not a Nepali national. As stated in the decision of case filed at the Dhankuta District Court, I am the wife of respondent Ongud Tamang. The court's ruling shall have to be obeyed by all agencies. If I am not to acquire a citizenship certificate, that would amount to a contempt of court as it would obstruct the implementation of court's judgement.

Though I am supposed to furnish various proof as per Clause 2(4) and (5) of the Guidelines on the Distribution of Citizenship, 2007, as the Court itself has verified my relation with the respondent, no other evidence is required. My brother Min Bahadur Sinjali Magar also features in the inquiry report. As he is a Nepali citizen by descent, it is evident that I, too, am a citizen of Nepal by descent. As such, when, I, the petitioner, has been proved as a Nepali citizen, I have been devoid of Nepali citizenship certificate due to the tendency to ignore court decision and the patriarchal attitude, norms and values of the Secretary of Dhankuta Municipality Office.

Thus, the Articles 8(2)(b), 12(1), 13(1)(2)(3) and 20(1)(3) of the Interim Constitution of Nepal, 2007; Section 3(1) of the Nepal Citizenship Act, 2007; and Clause 2(4)(5) of the Guidelines on the Distribution of Citizenship, 2007 have been flouted leading to an infringement as to the enjoyment of my constitutional rights. Hence, pursuant to the above constitutional and statutory provisions and the court decision, I hereby pray to the Court for issuing an order of mandamus and any other relevant order in the name of respondents as per Article 107(2) of the Interim Constitution of Nepal, 2007 instructing them to provide me - the writ petitioner Sun Kumari Magar Tamang - with the recommendation as well

as the citizenship certificate by descent, from the name of husband Ongud Tamang. The writ petition read as such.

An order of this Court on 16.04.2013 caused the respondents to file their written replies.

The written reply furnished by the respondent Ministry of Women, Children and Social Welfare read that: This Ministry has been striving for ensuring the rights, privileges and protection of women and children, since its inception, to the extent permitted by the means and resources. As the Ministry will give continuity to this initiative in future also, it is prayed that the writ petition should be set aside.

The written reply furnished by the respondent Ministry of Law, Justice and Parliamentary Affairs read that: Article 8(2) of the Constitution lays down that in case father or mother of an individual was a Nepali citizen at the time of birth of that individual, then he or she shall be citizen of Nepal by descent, together with the persons holding citizenship by descent prior to the inception of this Constitution. As such, let this writ petition be set aside.

The written reply furnished by the respondent Ministry of Federal Affairs and Local Development read that: The writ petition itself speaks that the petitioner approached the office of Ward No. 1 of the Dhankuta Municipality for procuring recommendation for the purpose of acquiring citizenship certificate where the persons examined by the office and featuring in inquiry report had stated that the applicant should not be granted such recommendation. As such, the petitioner was denied of such recommendation letter. Prior to making recommendation for citizenship purposes, the concerned local body will conduct necessary inquiry and investigation and ascertains the facts and truths. Thus, the act of Dhankuta Municipality cannot be held as otherwise. Pursuant to Section 262 of the Local Self Governance Act, 1999, the power conferred on the Municipality has to be exercised by that body itself. Since this Ministry need not be made a respondent with respect to the decisions and actions lawfully made from the Dhankuta Municipality, which in itself is an autonomous body, established as per the law, it is prayed that this writ petition be quashed.

The written reply furnished by the respondent Office of the Prime Minister and Council of Ministers read that: The Interim Constitution of Nepal, 2007 and the Nepal Citizenship Act, 2007 have provided for acquisition of Nepali citizenship for citizens of Nepal without discrimination of any sort. The fact that a person demanding citizenship has to duly apply before the concerned agency by fulfilling the procedures and formalities prescribed in the Acts

and Rules related to citizenship, cannot be held as otherwise. If the requirements are met, then citizenship certificate shall have to be awarded subject to the prevailing laws. It cannot also be said that the Chief District Officer has to grant citizenship to the petitioner by feigning ignorance to the process and procedures stipulated in the laws. As the issue raised by the writ petitioner shall be addressed in the written reply of concerned agency, let this writ petition be quashed.

The written reply furnished by the respondent Ministry of Home Affairs read that: Sun Kumari Magar Tamang in her writ petition could not specify which act of this Ministry breached her fundamental rights. In case someone seeks a Nepali citizenship certificate by fulfilling the legal formalities, he or she shall be provided with one from the concerned District Administration Office after satisfying the legal requirements. Upon looking at the writ plea of petitioner, the Dhankuta District Court has delivered its judgement in the partition of property case that she is entitled to 1/5th of the property of Ongud Tamang by holding her wife of the defendant. That decision being confirmed by the Appellate Court, Dhankuta she has been held as wife of Nepali citizen Ongud Tamang and also entitled to share in his property. Thus, if she fulfills the legal formalities, she is well authorized to receive the citizenship. As the petitioner does not seem to have applied before the concerned District Administration Office seeking citizenship certificate by fulfilling the legal requirements, let this writ petition be set aside.

The written reply furnished by the respondent District Administration Office, Dhankuta read that: A citizenship certificate shall be duly issued to the petitioner in case she presents herself with an application seeking such certificate and after fulfilling the formalities specified in Section 8(1) of the Nepal Citizenship Act, 2007 and Rule 3(1) of the Citizenship Rules, 2007. The writ plea of petitioner that she was denied a citizenship certificate is false as she has not filed any application at this Office for acquiring citizenship certificate. As such, it is prayed that the present writ petition should be quashed.

The written reply furnished by the respondent Ongud Tamang read that: This petitioner who is 22 years elder than me had filed a relationship verification and partition case against me and also has obtained land ownership transfer warrant on 05.06.2011. I have not featured in the inquiry report of 15.11.2011 and I was unaware of the matter. As the allegation that she could not acquire citizenship by descent because of me is false, I pray that the writ petition be set aside.

The written reply furnished by the respondent Dhankuta Municipality read that: The writ petitioner

filed a partition case at the Dhankuta District Court in which she was held entitled to receive partition share of property. On the same basis, she applied before this Office on 08.11.2011 seeking recommendation for citizenship. In the particulars section of the verdict of Dhankuta District Court dated 21.11.2007, it was stated that the defendant is entitled to move the Appellate Court, Dhankuta within 35 days of receipt of this judgement in case he dissents against the same and as such a notice of appeal was provided to both the plaintiff and defendant. However, no document was submitted at this Office as regards whether the plaintiff and defendant have mounted an appeal or not, whether the Appellate Court has decided the case or not if an appeal was filed, and if decided what was the verdict of that Court. Moreover, nothing was mentioned about the citizenship of the applicant. As such, an inquiry was conducted on 15.11.2011 at the presence of the writ petitioner, her own brothers and sisters in laws, and local persons of repute so as to determine whether a recommendation for citizenship can be made as per the demand of writ petitioner or not. The entire persons present in the inquiry held and signed in unison that as the details submitted by petitioner are false; no recommendation can be granted as sought by her. Thus, as this Municipality is not at fault in the lack of recommendation for citizenship purposes to the petitioner, it is prayed that the writ petition be scrapped.

The papers enclosed in the case file were studied with respect to this case duly submitted before the Bench by ascending through the daily cause list. Learned advocate Sushma Gautam representing the writ petitioner pleaded before this Court that: The petitioner was held as the wife of Ongud Tamang and entitled to 1/5th share of her husband's property, pursuant to the verdict of Dhankuta District Court dated 21.11.2007. When the respondent Ongud Tamang lodged an appeal against the verdict, the Appellate Court, Dhankuta scrapped the appeal itself. As such, that judgment has become final. When the final court decision has held petitioner as the wife of respondent Ongud Tamang, if she were not to receive a citizenship certificate, then she will also be unable to obtain her share of property as per the decision. As such, she applied before the Office of Ward No. 1 of Dhankuta Municipality, seeking recommendation for citizenship purposes, that Municipality, called an inquiry and in collusion threatened the members of inquiry to not grant such recommendation, as it detailed in the writ petition. The writ petitioner is a daughter of Nepali parents and has married a Nepali citizen. Thus, even as per the Constitution and laws, the writ petitioner well deserves a Nepali citizenship and also pursuant to the Court decision, she is also equally entitled to

have a citizenship. However, as the respondents have conspired to make an inquiry report in such a manner as to deny her citizenship, this act has amounted to the violation of right to citizenship of the petitioner. Hence, an order of mandamus has to be issued in the name of respondents instructing them to provide citizenship to the petitioner by nullifying the inquiry report.

Similarly, learned advocate Ram Krishna Kafle representing the respondent Ongud Tamang argued that: The petitioner has filed this writ petition claiming that she has not yet acquired the citizenship. In the partition case filed by the petitioner against my client at the Dhankuta District Court, though it was ruled that she is entitled to her share of partition property, nothing is specified in the verdict as regards whether she is entitled to obtain citizenship or not. Whereas various proof are required for acquiring citizenship as per the law, the petitioner has failed to collect any of them. In this scenario, it cannot be claimed that citizenship shall have to be obtained from the name of Ongud Tamang. As such, this writ petition deserves to be scrapped.

Upon listening to the submissions of learned counsels from both sides, a decision seems to be requisite on whether an order as sought in the writ petition needs to be issued or not.

Upon delving at the decision, the petitioner holds that she is a spouse of respondent Ongud Tamang. When she filed a partition case in the capacity of his wife, the Dhankuta District Court also held her as the wife of Ongud Tamang in the case itself and ruled that she shall obtain 1/5th of the partition share from his property on 21.11.2007. When respondent Ongud Tamang filed an appeal against that judgment, the Appellate Court, Dhankuta quashed the appeal on 14.06.2009. As the appeal itself was trashed, the decision of trial court has become final. In order to implement even this final decision, a citizenship certificate is required. As such, for the purpose of acquiring a citizenship certificate, when the writ petitioner approached the Office of Ward No. 1 of Dhankuta Municipality, seeking recommendation for the same, that Municipality, called an inquiry, and coerced the members to prepare an inquiry report that would deny recommendation for citizenship to the petitioner. Being so, it has violated her constitutional and statutory right to obtain her partition share and as such, the petitioner has demanded from this Court that an order of mandamus to be issued in the name of respondents instructing them to provide citizenship to the petitioner by nullifying the inquiry report.

Citizenship certificate is a paramount document for any individual. First of all, it assigns an identity

of nationality on the individual and secondly, in its absence, no one will get an opportunity of employment. Moreover, a person lacking citizenship will not be allowed to register industries, businesses and trades. At this premise, even though a person may be naturally a human being, he or she shall be deprived of rights from a legal perspective. There is no dispute to the fact that the Interim Constitution of Nepal, 2007 and Constitution of Nepal have provided for acquisition of citizenship on the basis of descent and naturalization. Article 8(2)(b) of the Interim Constitution of Nepal, 2007 lays down that in case father or mother of an individual was a Nepali citizen at the time of birth of that individual, then he or she shall be citizen of Nepal by descent. Similar harmonious provisions may be found in Article 11(2)(b) of the Constitution of Nepal as well as Section 3(1) of the Nepal Citizenship Act, 2007.

As provided by the Constitution and laws above, a person seeking citizenship shall have to furnish, pursuant to Citizenship Rules 2007 and Guidelines on the Distribution of Citizenship 2007, Nepali citizenship certificates of father or mother or any other close relative within 3 generations; and a recommendation made by the concerned local body which would reveal the birth place and relation or birth registration certificate. Upon the submission of these evidential papers, the concerned agency prepares the relevant citizenship certificate.

Likewise, from the writ petition, it is learnt that the petitioner has not yet acquired a citizenship certificate. In case a Nepali woman who has got married prior to obtaining citizenship certificate, in order for receiving one, shall have to submit the marriage registration certificate, citizenship certificate of her husband or father in law, verification from anyone among the husband, mother in law, father in law or brother in laws, and the photocopies of citizenship certificates of the maternal parents or brothers. The respondents seem to have cited the same matter as basis and stated in their written replies that the petitioner shall not be denied of her right to acquire citizenship in case she comes after fulfilling the legal formalities. Certainly, the State requiring the submission of definite proof in a serious and sensitive matter like citizenship cannot be held as otherwise.

However, the petitioner, as a plaintiff, seems to have filed a partition case at the Dhankuta District Court by making respondent Ongud Tamang as the defendant. The Dhankuta District Court also held her as the wife of Ongud Tamang in the case itself and ruled that she shall obtain 1/5th of the partition share from his property on 21.11.2007. When respondent Ongud Tamang filed an appeal against that judgment, the Appellate Court, Dhankuta quashed the appeal on 14.06.2009. As

the appeal itself was trashed, the decision of trial court has become final. The spirit of doctrine of finality of decision is that a final verdict should go into implementation. If the court goes on deciding the disputes, but its implementation is obscured by trivial matters, then such a verdict will lack any relevance.

The petitioner seems to have filed an application at the Office of Ward No. 1 of Dhankuta Municipality, seeking recommendation for the purpose of obtaining citizenship certificate. As such, that Municipality called an inquiry on 15.11.2011 at the presence of local individuals which yielded a report. In the answer no. 5 of that inquiry report, the persons in witnesses have written down that the petitioner has not yet gained a citizenship certificate. Though the inquiry report states that recommendation for citizenship to the petitioner by establishing respondent Ongud Tamang as her husband could not be given; the court verdict that already held her as the spouse of respondent Ongud Tamang, is not yet proved otherwise. Thus, it may lead to a situation whereby the petitioner will be deprived of obtaining her partition share in the lack of citizenship and the execution of court verdict will also become challenging. Considering these circumstances, as the inquiry report made on 15.11.2011 by the Office of Ward No. 1 of Dhankuta Municipality amounts to a breach of right of the

petitioner to acquire citizenship and property, the action and inquiry report dated 15.11.2011 is hereby annulled.

Now, an order of mandamus is hereby issued in the name of respondents, pursuant to Article 107(2) of the Interim Constitution of Nepal, 2007 and Article 133(2)(3) of the Constitution of Nepal instructing them to grant the petitioner citizenship certificate by establishing her as the wife of respondent Ongud Tamang, in following the spirit of verdict in the partition case, if she applies before the District Administration Office, Dhankuta by enclosing the copy of verdict of that case. As it is held as above, let the respondents be intimated of this order through correspondence and let this case file be submitted to the Records Section after duly writing it off the registry.

Sd/-

(Justice)

I concur with the aforementioned order.

Sd/-

(Justice)

Bench Officer: Bhim Bahadur Niraula

Computer Operator: Mandira Ranabhat

[Done on Sunday, 04.06.2017]



Bhadra 05, 2074 (21st August, 2017)

Supreme Court

Division Bench

Honorable Justice Dipak Raj Joshi

Honorable Justice Sapana Pradhan Malla

Order

073-WO-1115

Subject: Certiorari, Mandamus

Sarthak Raut, grandson of Purna Bahadur Raut, son of Krishna Raut and Samundra Raut (Pariyar), a resident of Ward No. 15 of Bharatpur Sub-metropolis of Chitwan district1 Petitioner

Vs.

Nepal Government Home Ministry, Singha Durbar, Kathmandu1

District Administration Office, Chitwan1

Office of ward No.15 of Chitwan Sub-metropolitan city, Currently changed to Ward No. 15

of Chitwan Metropolitan city1 Opponent

The fact in nutshell and decision in this writ petition filed under Article 46 and 133 of the Constitution of Nepal, 2072 have been as follows.

I, the petitioner Sarthak Raut, was born on date 2051/10/21 (February 4, 1995 A.D.) on behalf of my parents, Krishna Raut (C.C.No. 35026/1318, D.A.O., Chitwan), permanent resident in Chitwan district, Mangalpur V.D.C., Ward No. 1 upon being born in Udaypur district and Samundra Pariyar, resident of Chitwan district, Mangalpur V.D.C., Ward No. 1. Since I attained maturity, application was furnished on date 2073/10/4 (January 17, 2017 A.D.) to get citizenship by descent provided, the Ward concerned endorsed with rejection stating that recommendation could not be provided for the sake of citizenship certificate as there were grounds of the father's C.C. and birth; and information was provided for the petitioner through the letter of L.No. 073/074 D.No. 4116 of the date of 2073/10/5 (January 18, 2017 A.D.) that information had been given in accordance with the order that citizenship by descent could not be presently provided for the children of the persons who have obtained the citizenship certificate by birth, as per the circulation of the Ministry of Home Affairs (Citizenship Monitoring and National Identity Card Management Section) of D.No. 491 of the date of 2070/12/20 (April 3, 2014 A.D.). From the stated information

letter of the opponent District Administration Office, the petitioner has been deprived of the inherent constitutional and legal right to obtain citizenship; hence, an application of R.No. 654 was furnished to the Government of Nepal, Ministry of Home Affairs on date 2073/11/24 (March 17, 2017 A.D.) as per Section 18 of Nepal Citizenship Act, 2063, due to being fallen in injustice. However, even the stated Ministry has not done the work of providing the petitioner with the citizenship yet; hence, upon being deprived of the legal rights conferred by Articles 10 (1), 11 (1), Part (b) of (2) of the Constitution of Nepal, constitutional and inherent natural rights to use the fundamental rights conferred by Article 16 (1), Article 17 (1), Article 18 (1), (2) Article 33 (1), (2), Article 35 (1), (3), Article 36 (1), (2), (3), Article 37 (1), Article 41 (1) have also been affected; hence, this petition has been submitted to the esteemed Court on the basis of Article 46 of the Constitution of Nepal.

There is no confusion in the fact that I, the petitioner, as well as the petitioner's parents, am a Nepali, and there is no condition to say and decide by even the opponents that the petitioner is not a Nepali. In accordance with the Part (b) of Article 11 (2) of the Constitution of Nepal, there is a constitutional provision to deem me a citizen of Nepal by descent, and it is constitutionally

undisputed that there is constitutional right to obtain citizenship as per Article 11 (1). A legal provision has been made as per Section 3 (1) of Nepal Citizenship Act, 2063 that a person whose father or mother was a citizen of Nepal at his or her birth shall be a citizen of Nepal by descent; hence, even as per the stated legal provision, it is legally undisputed that I, the petitioner, am a citizen of Nepal. In such a situation, Article 10 (1), Article 11 (2) (b) of the Constitution and Section 3 (1) of Nepal Citizenship Act, 2063 have been directly violated by the order and information letter of the opponent, District Administration Office, that it could not provide citizenship certificate by descent for the child of the persons who have acquired citizenship certificate by birth.

Hence, by revoking the order and the letter of the stated date 2073/10/5 (January 18, 2017 A.D.) and including the circulation of the Ministry of Home Affairs mentioned on it, petitioner's constitutional and legal right should be enforced by issuing mandamus or other appropriate order to provide or get the Nepali citizenship certificate provided for the petitioner. Writ petition reads as above.

What has happened in this? Why is not the order as per the petitioner's claim supposed to be issued? Submit as per rule after the affidavits have been furnished or deadline is elapsed, by issuing summon notice on the names of the opponents by attaching the replica copies of the order and petition to submit the affidavits by the Opponent No. 3 itself or through its representative as per law and by other opponents via Office of the Attorney General within 15 days, from the summon notice received, except for the travel time limit, with proof and evidence, if there is any base, upon the order which is not supposed to be issued as per the petition claim.

Moreover, the issue of obtaining citizenship of the petitioner has been connected with the present petition; hence, it is reasonable to quickly resolve it; hence, preference has been given as per Rule 63 (3) (f5) of Supreme Court Rule, 2049. Order of the date of 2074/1/7 (April 20, 2017 A.D.) reads as above.

As the petitioner, Sarthak Raut, furnished application to this Office stating that citizenship by descent should be provided, opinion was presented before the C.D.O. on date 2073/10/4 (January 17, 2017 A.D.) by A.C.D.O., stating, "In the context that when the petitioner went to the Office of Bharatpur Sub-metropolitan City, Ward No. 15 to obtain recommendation for citizenship certificate, recommendation was not made; hence, he has submitted application to get it provided, the document, which is equal to the endorsement with rejection mentioned by the Ward Secretary concerned, stating that recommendation could not

be made for providing with citizenship certificate because the citizenship certificate of the petitioner's father is by birth (on the basis of birth), seems to be as per the provision of the received circulation of D.No. 491 on date 2073/12/20 of M/S Ministry of Home Affairs, Citizenship Monitoring and National Identity Card Management Section; hence, presently, I present the opinion that citizenship certificate by descent cannot be provided;" and the petitioner concerned has been provided with information as per this.

The provision mentioned in Sub-section 4 of Section 3 of Nepal Citizenship Act, 2063 shall become inactive due to Nepal Citizenship (First Amendment) Ordinance, 2069 as per Part C of proviso clause of Sub-article 2 of Article 88 of the Interim Constitution of Nepal, 2063 from the date of 2070/12/12 (March 26, 2014 A.D.); hence, by requesting the description that there was a letter of D.No. 491 on date 2070/12/20 (April 3, 2014 A.D.) of M/S Ministry of Home Affairs with the description that it was requested according to decision because the decision was made by the Government of Nepal (from the H'ble Deputy P.M. and Home Minister level) on date 2070/12/11 (March 25, 2014 A.D.), stating that citizenship should not be issued from the same date as per the stated provision, the present affidavit has been submitted to the esteemed Court by requesting the description that this petitioner could not be provided with citizenship by descent. Affidavit furnished on behalf of District Administration Office, Chitwan reads as above.

The petitioner may also obtain citizenship from the body concerned as per process determined by law after fulfilling the qualifications as per the Constitution and law. There are clear provisions to obtain citizenship from the bodies concerned by adopting the process mentioned in the act and law including the Constitution of Nepal, prevailing Citizenship Act, 2063, Citizenship Rule, 2063. The Ministry of Home Affairs has been conducting its functions and actions by remaining within the jurisdiction specified by the Constitution and law. The Ministry has not done any work to violate the rights and powers conferred by the Constitution and law itself and through the body under it. Moreover, it seems that substantial ground and reason could also not be revealed in the writ petition regarding why and for what the District Administration Office, Chitwan had refused to provide the opponent with citizenship. The Ministry of Home Affairs has not illegally issued any orders, directives and circulations for the bodies under it contrary to the prevailing law, stating not to provide citizenship certificate. Hence, the writ petition filed by making this Ministry an opponent with rough estimation

laying baseless and unclear claim is revocable. Affidavit furnished on behalf of the Government of Nepal, Ministry of Home Affairs reads as above.

Since the petitioner's father himself has obtained the citizenship by birth, it would not be in line with the law to recommend for the citizenship by descent to the petitioner; hence, the opponent was informed of the same description. The opponent's writ petition should be revoked. Affidavit furnished on behalf of the Office of the Committee of Bharatpur Metropolitan City, Ward No. 15 reads as above.

In the present case that has been submitted to the Bench upon being inducted to the cause list as per rule, while considering after hearing including the pleadings made by learned senior advocate Mr. Chandreshwar Prasad Shrestha, present on behalf of the petitioner, stating that in the situation that the Constitution of Nepal has deemed the petitioner qualified to obtain citizenship by descent, the circulations, letters given not to provide the petitioner with the citizenship by descent by assuming the circulation made to encroach the Constitution have become revoked, hence, mandamus should also be issued to provide the petitioner with the citizenship by descent, and by the learned deputy attorney general, Mr. Kiran Paudel, present on behalf of the Government of Nepal, stating that the decision as well as the endorsement with rejection not to provide the petitioner with the citizenship by descent has been in line with the law because Sub-section 4 of Section 3 of Nepal Citizenship Act, 2063 has been inactive on the basis of including the letter of the date of 2070/12/20 (April 3, 2014 A.D.) issued as per the decision of the Ministry of Home Affairs of the date of 2070/12/11 (March 25, 2014 A.D.), hence, the writ petition should be revoked, it seems that decision is supposed to be made on whether the order is supposed to be issued as per the petitioner's claim or not.

In this, while considering towards the decision, dispute does not seem in that the petitioner's father, Babu Krishna Raut, and mother, Samundra Pariyar, are the citizens of Nepal. While looking into the replica copy of the citizenship certificate obtained by the petitioner's father, Babu Krishna Raut, it appears that 'birth' has been mentioned in the type of citizenship and 'descent' has been indicated in the citizenship of the petitioner's mother, Samundra Pariyar. From the birth registration certificate of the petitioner, Sarthak Raut, it seems that he is the son of these Krishna Raut and Samundra Raut, and that his date of birth is 2051/10/21 (February 4, 1995 A.D.); hence, it seems that the age of this petitioner, Sarthak Raut, has completed the age of 16 years; hence he seems to have attained the maturity upon becoming qualified to obtain Nepali citizenship.

Now, upon looking towards whether the petitioner can obtain the Nepali citizenship certificate by descent or not, as per the provision of Article 11 (2) of the Constitution of Nepal, there is a provision, stating, *The following person who has his or her permanent domicile in Nepal at the time of the commencement of this Constitution shall be the citizen of Nepal by descent*; and Following (b) of Article 11 (2), there is constitutional provision to clarify the Article 11 (2), stating, *a person whose father or mother was a citizen of Nepal at his or her birth*. Besides the stated provision too, by making constitutional provision as per Article 13 (3) of the Constitution of Nepal, stating, *A child of a citizen having obtained the citizenship of Nepal by birth prior to the commencement of this Constitution shall, upon attaining maturity, acquire the citizenship of Nepal by descent if the child's father and mother both are citizens of Nepal*, it appears that right has been conferred to the citizens.

While analyzing the aforementioned constitutional provisions, if the petitioner's parents were the citizens of Nepal at his birth, it seems that he may obtain Nepali citizenship by descent. Both of his father and mother had obtained citizenship before the commencement of this Constitution, and even if such citizenship certificates are by birth, it seems that the Constitution itself has made clear provision that the child of such citizens may obtain Nepali citizenship by descent. The petitioner's parents both seem to have obtained citizenship of Nepal before the commencement of the Constitution of Nepal. It seems that the petitioner's father has obtained citizenship certificate by birth and mother has obtained citizenship certificate of Nepal by descent. In the present situation, it cannot be said otherwise to the matter that this petitioner must obtain Nepali citizenship by descent. Due to the provision of Section 3 of Nepal Citizenship Act, 2063 too, no restriction seems to have been imposed upon this petitioner against obtaining Nepali citizenship certificate by descent. In this way, it seems that there are constitutional and legal provisions to obtain Nepali citizenship certificate by descent by this writ petitioner.

The documents relating to human rights on which Nepal is a signatory, specially, Article 7 of the Convention on Rights of the Child has made the provision of the right to nationality and Article 8 also has made provision that no illegal interference can be made in the certainty of the identity of the children. Certainty appears to have been made on the right not to discriminate between those who have obtained citizenship by birth and by descent due to the international law following the doctrine of non-discrimination (Article 5 (2) of European Convention, 1997).

From the affidavits of the opponents, it seems to have been mentioned that citizenship certificate cannot be provided on the basis of the circulation of the Government of Nepal, Ministry of Home Affairs of the date of 2070/12/20 (April 3, 2014 A.D.). On the ground of constitutional and legal provisions analyzed above, conditions appears that the petitioner may obtain Nepali citizenship by descent. As it is contrary to procedural norm to cross the Constitution and law by the decision or circulation of the Ministry; hence, it seems that the letter of District Administration Office, Chitwan of the date of 2073/10/5 (January 18, 2017 A.D.) that the petitioner could not be provided with the citizenship certificate by descent contrary to the provisions of Constitution and law, as per the circulation of the Ministry of Home Affairs of the date of 2070/12/20 (April 3, 2014 A.D.), the stated correspondence has been revoked with the certiorari order.

To impose prevention or restriction upon the use of the rights and powers, which have been conferred by the constitution and law, by government body shall be contrary to the rule of law and jurisprudential norm. Hence, as the petitioner shall have to use the

rights and their remedies as per the Constitution and law, there is the condition that the writ petitioner shall have to obtain Nepali citizenship certificate by descent; hence, it is decided the mandamus order shall also be issued on the names of the opponents to provide the petitioner with Nepali citizenship certificate by descent as per rule. Provide the opponents with the information of the present order. Submit to the record section, by striking off the registration of the case-file of the present writ petition.

S/d

Justice

I agree with the decision.

S/d

Justice

Bench Officer: Suman Kumar Neupane

Computer Operator: Mandira Ranabhat

Done On: 2074/05/05/02 (Monday, 21st August, 2017)



Poush 24, 2074 (8th January, 2018)

Supreme Court

Division Bench

Right Honorable Chief Justice Gopal Parajuli

Honorable Justice Purushottam Bhandari

Order

074-WO-0161

Subject: Certiorari

Bhani Maiya Shakya (Bhikchhu), a resident of Ward No. 23 of Kathmandu Metropolis of Kathmandu district1

Karan Bhusan Shakya, son of the afore stated person, a resident of Ward No. 23 of Kathmandu Metropolis of Kathmandu district1 Petitioner
Plaintiff

Vs.

Nepal Government, Office of Prime Minister and Council of Ministers, Singha Durbar, Kathmandu1

Nepal Government, Ministry of Home, Singha Durbar, Kathmandu1

Nepal Government, Ministry of Law, Justice, Constitutional Assembly and Parliamentary Affairs, Singha, Durbar, Kathmandu1

Nepal Government, Ministry of Education, Singha Durbar, Kathmandu1

Nepal Government, District Administration Office, Babarmahal, Kathmandu1

Nepal Government, District Education Office, Chagal Marg, Kathmandu1

Nepal Government, National Education Board, Sano Thimi, Bhaktapur1 Opponent
Respondent

The fact in nutshell of this case filed under Article 107 (2) of the Constitution of Nepal, 2063 has been as follows.

1. We the petitioners are living at ward No. 23 of Kathmandu Metropolitan City of Kathmandu District. I, Bhani Maya, petitioner have been an unmarried mother, became mother prior to the establishment of marital relationship. After the matter came into notice that I have been pregnant my brother, sister-in-law, mother, father expelled me from the home at 11 PM. After I was expelled, I got asylum at the home of one of the neighbors of my location and sent information for about 20th time so as to bring me home to my lover but he remained out of contact. Karan Bhusan, petitioner was born on 2048/01/20 (03rd May, 1991). Post birth of Karan Bhusan we were taken home and kept by

father and mother. After Karan Bhusan attained age to join school I admitted the son to nearly located Sital.... English Secondary School. I registered name of my father as the immediate guardian. However, the school forwarded record mentioning my father i.e. grandfather of Karan in the column of father to the District Education Office. Presently, the name of my father i.e. grandfather of Karan has been mentioned in all the documents of academic qualification wherein the name of father is mentionable. When contacted to make citizenship after attaining majority the Ward Office returned back without making citizenship saying that the citizenship could not me made in the name of the grandfather. I, the petitioner, Karan wanted to make my identity by using the name of my mother Bhani Maya, the petitioner and when I,

Bhani Maya went to make identity of my child by name I was returned back time and again by saying that, such law has not been introduced. At present, when I, Karan went to Ward Office for the purpose of the recommendation of citizenship filling the form under Schedule-1 the Ward Chairperson and the person signing under public deed of inquiry told that name of my grandfather has been inserted on father's name in my academic qualification certificates and that the recommendation for citizenship and deed of public inquiry could not be made without mentioning the name of my father, now, therefore, being obliged, I inserted name of father in the Schedule form and accordingly the ward office initiated public inquiry and forwarded recommendation. However, the District Administration Office refused to issue citizenship certificate mentioning that difference arose in the name of father, the name of father has been inducted in the Schedule which requires the submission of the photocopy of citizenship of the father as well and accordingly the citizenship has not been issued. I, Karan Bhusan Shakya Petitioner son of Bhani Maya Shakya, have been born in Nepal and living continuously in Nepal have got inserted name of the grandfather in the column wherein my father's name was to be incorporated, I wanted to make identity by mother's name in place of which I have been obliged to keep name of my father and after inducting the name due to inability to submit his citizenship certificate copy, at present I have been deprived of getting Nepalese citizenship certificate and I, Bhani Maya, the petitioner have been deprived of granting identity to my child and I have been obliged to live in state less condition, have been in the haven of the court. Article 10 (1) of the constitution of Nepal makes provision that no citizenship of Nepal shall be deprived of right to obtain citizenship. Article 11 (2) (B) makes provision that "If the father or mother of any person has been the citizen of Nepal at the time of his/her birth the person as such shall be citizen of Nepal by descent" and under the definition of descent, father or mother has been stipulated. It has been clear that the law has provided right to choose from whose name citizenship shall be obtained to the person getting citizenship.

2. In addition to the provisions of our constitution and law the treaty and agreements ratified by Nepal being party have also pursued the right of citizenship as human right. Universal Declaration of Human Right (UDHR), 1948 Article 15 grants right to every person for

citizenship. It provides that no person shall be arbitrarily deprived of his/her right to citizenship. International Covenant on Civil and Political Rights, 1966 Article 24 provides that (every child shall be registered immediately after birth and shall have a name, every child had the right acquire nationality).

3. Convention on Eliminating of All forms of Discrimination against Women Article 9 (2) mentions that State Parties shall grant women equal right with respect to the nationality of their children and accordingly our constitution and law as well make provision. However, the official under the bodies to grant citizenship have been arbitrarily depriving persons to have citizenship or identity and thereby extending injustice. As per Article 7 of Convention relating to child provides that the child should be registered immediately after birth and shall have the right from birth to a name, the right acquire a nationality and as far as possible the right to know and be cared for by his parents. The provisions of the treaty and convention mentioned above have guaranteed the equal right to both man and women to grant citizenship to man and women as a matter of equal right. Hence, the clear provision made to grant citizenship, the international treaty, agreements, our constitution and law but the wrong interpretation is drawn opposite to constitutional provision deprived from the identity to the person seeking identity to keep person state less who wanted to get identified by agreement and treaty and thereby extended injustice.
4. All the obligations created by the convention mentioned above ratified by Nepal being a party which are considered to be basic documents have been accepted. On Article 279 of the constitution of Nepal the ratification, participation and approval have been mentioned to be held as per law. By considering the afore stated provision of the constitution section 9 (1) of the Nepal Treaty Act, 2047 pursued the said provision and clearly provided on Section 9 (1) that, in case the matter of treaty ratified by Nepal appears clashing with the prevalent law, it shall be held void to the extent of repugnancy for the purpose of treaty and the provision of treaty shall be enforced as equivalent to the national law of Nepal. As mentioned by treaty our constitution and law as well also provided the right that the mother or father may grant citizenship or identity to the respective son and daughter. However, in practice the said enforcer of the said right has

not been enforcing the said right and depriving us, the petitioner from the right to identity.

5. Article 10 (1) of the constitution makes provision that no Nepali citizen shall be deprived of right to obtain citizenship and Article 11 (2) (B) makes the provision that in case the father or mother of newly born has been Nepali citizen at the time of birth the person as such shall be held Nepali citizen on the basis of descent. Section 3 (1) of Nepali Citizenship Act, 2063 has recognized father or mother under the definition of descent making provision that in case the father or mother of newly born has been the citizen of Nepal at the time of birth, such person shall be held Nepali citizen by descent. As the law provides right to select from whose name the citizenship shall be taken to the person receiving citizenship I Karan Bhusan Shakya shall be provided citizenship in the name of my mother petitioner Bhani Maiya Shakya as descent removing the name of my grandfather in the academic qualification certificates of I, petitioner Karan Bhusan Shakya on the column of father's name and maintaining the name of Bhani Maiya Shakya, the petitioner and mandamus order shall be issued to the opponent to do cause to do the same. The writ petition dated 2074/05/23 (08th September, 2017) reads as such.
6. What has happened in this? Why should not the order be issued as per demand of the petitioner? In case the order be not issued present the rejoinder with the basis and reason and attend, issue the notice to the opponent as per the rule and grant priority hearing as per Rule 73 (1) of the Supreme Court Rules, 2074 and present accordingly. The order dated 2074/05/25 (10th September, 2017) reads as such.
7. The Home Ministry is always committed for the enforcement of the fundamental rights granted by the constitution. This Ministry has not done any work infringing the rights granted by the constitution and law. As the objective basis and reason have not been clear by the petitioner about what kind of directive and decision of the Ministry refused the opponent to grant citizenship the petition filed with the baseless and unclear demand arbitrarily making this Ministry opponent shall be avoidable. The rejoinder of Ministry of the Home reads as such.
8. In the case where application is filed by fulfilling the legal process along with the clear description and essential documents seeking for the certificates of citizenship usually the citizenship is granted. As the matter is clear by the petition itself that the petitioner has filed two different particulars attended Office without fulfilling the

essential documents and proofs the petition has been subject to be quashed. The rejoinder of District Administration Office, Kathmandu reads as such.

9. This Ministry has no role and participation in granting citizenship certificate and there has been no clear citation that what kind of work and activities of the Ministry has infringed what kind of right of the petitioner, the petition filed by making the unrelated body to be respondent has been quash able. The rejoinder of the Ministry of Law, Justice and Parliamentary Affairs reads as such.
10. The opponent with petitioners have not been able to clearly point out what kind of work, activity or decision of the Office of the Prime Minister and Council of Ministers has infringed what kind of the constitutional and legal right of the petitioner. By remaining within the ambit of the constitution and law over the subject of recommendation for citizenship it is required to fulfill the prescribed process of law the matter as such shall not be termed otherwise. The rejoinder of the Office of the Prime Minister and Council of Ministers reads as such.
11. The cause to establish this Ministry as opponent has not been clear and whereas there has been no plea as well that the decision of any kind of this Ministry has infringed right of the petitioner the reply of the Ministry of Education reads as such.
12. The matters raised by the petitioner have not been concerned with this board, in case there exists any error on the issued certificate there has been fixed criteria and process for correction and upon filing the petition following the same provision and process the error as such may have been corrected and the petition filed relying on the unrelated facts shall be quashed. The written reply of the National Examination Board reads as such.
13. In the case presented as per the rules the pleading of the learned advocate Sushma Gautam attending on behalf of the petitioner with the content that the petitioner Karan Bhusan Shakya has been the son of Nepali citizen petitioner Bhani Maiya Shakya born and grown in Nepal, completed study up to 10+2 level studying on higher education attempting for employment which requires citizenship of Nepal for which there has been obstacle posed by the bodies including the District Administration Office, Kathmandu, the name of guardian grandfather has been maintained but the school has written the name of grandfather in the father's column and issued the academic certificates it shall be amended,

and the submission of the learned joint attorney Shyam Prasad Bhattarai, attending on behalf of the opponent Nepal Government with the statement that over the question of citizenship in the name of the mother the directive order has been issued in the name of Home Ministry on N.L.M. 2068 No.2 Decision No.8558 and accordingly the matter has been matured there has been no circumstance to issue order on the same matter therefore, the writ shall be quashed, has been heard.

14. Keeping the afore stated pleading and claim under petition and written response in purview the decision seems essential whether or not the order as per the demand of the petitioner shall be issued.
15. Turning to decision the content of the writ petition appears that Karan Bhusan Shakya was born as son on 2048/01/20 (03 May,1991) from the Nepali citizen petitioner Bhani Maiya shakya and has been studying to Bachelor Level and the obstacle is posed for the obtainment of his citizenship due to lack of citizenship of the father and the District Administration Office has refused to grant citizenship on the basis of the recommendation of the board, public inquiry and whole documents as well attached with the form under Schedule-1 filled up by him the mandamus order be issued in the name of the opponent Home Ministry and District Administration Office Kathmandu to grant descent citizenship to him from the name of the mother Bhani Maiya Shakya and due to error of the school in the academic certificates of the petitioner Karan Bhusan Shakya the name of the guardian grandfather has been written in the father's column, the said name shall also be removed and the name of mother shall be established in the name of the Ministry of Education and National Examination Board and the written reply of the District Administration Office reads that the petitioner has submitted different description, not fulfilled the essential documents and proof and attended the Office that the matter is clear by the writ petition itself the petition shall be quashed and the other opponents have filed the written response mentioning that no constitutional and legal right of the petitioner have been infringed.
16. The birth certificate shows that out of the petitioners the petitioner Karan Bhusan Shakya was born on the date 2048/01/20 (3rd May 1991) in Kathmandu by the womb of writ petitioner Bhani Maiya Shakya. It is noted that at the time of birth of this petitioner the father remained out of contact and whereas the mother of this writ petitioner Karan Bhusan has been Bhani Maiya Shakya, the writ petitioner the daughter

of Nil Ratna Shakya, a resident of ward No. 23 of Kathmandu Metropolis of Kathmandu district, the matter is certified by Nepali citizenship certificate taken by Bhani Maiya Shakya from the District Administration Office, Kathmandu on the date 2049/09/26 (10th January,1993) on the basis of descent. Hence, this writ petitioner Karan Bhusan Shakya has been the son of Bhani Maiya Shakya who has obtained citizenship on the basis of descent, the matter has been proved by birth registration certificate, the deed of public inquiry carried up by the ward office attached in the file. At the time of birth of this writ petitioner Karan Bhusan Shakya his father remained contact less, his address appeared to be unknown the matter has been shown by the deed of public inquiry of the office of ward No. 23. The writ petitioner Karan Bhusan Shakya applied before the District Administration Office, Kathmandu filling up the form of Schedule-1 seeking for citizenship of Nepal by descent mentioning that the mother has been citizen of Nepal pursuant to Section 3 (1) of Nepal Citizenship Act, 2063 and it has been seen that he has been deprived of getting citizenship because of being unable to present copy of citizenship of father. There is no controversy over the fact that, this petitioner Karan Bhusan Shakya has applied seeking citizenship before the District Administration Office, Kathmandu on the basis of Section 3 (1) of Nepal Citizenship Act, 2063 with the attachment of citizenship certificate of mother, birth registration certificate, documents of public inquiry as well subject to identification by the mother under rule 3 of Nepal Citizenship Regulation 2063.

17. Upon viewing whether this writ petitioner Karan Bhusan Shakya could or could not obtain Nepali citizenship certificate, it is appropriate to recite Sub-article 1 and 2 of Article 11 of the constitution of Nepal and Section 3 of Nepal Citizenship Act, 2063, In viewing sub-article 1,2,3 of Article 11 of the constitution of Nepal:
Section 11: To be held citizen of Nepal: (1) A person who has acquired citizenship of Nepal at the time of commencement of this Constitution and the persons qualified to obtain citizenship shall be the citizen of Nepal.
(2) The following person who has his or her permanent domicile in Nepal at the time of commencement of this Constitution shall be the citizen of Nepal by descent:
 - (a) a person who has obtained the citizenship of Nepal by descent prior to the commencement of this Constitution,

- (b) a person whose father or mother was a citizen of Nepal at his or her birth.

In the afore stated section 11 sub-article 1 it is said that the persons qualified to obtain citizenship shall be the citizen of Nepal and in article 2 (1) it is said that a person whose father or mother was a citizen of Nepal at his or her birth shall obtain citizenship by descent. Similarly, Section 3 (1) of Nepal Citizenship Act, 2063 mentions that a person whose father or mother was a citizen of Nepal at his or her birth shall be held citizens of Nepal by descent.

18. With the observation of afore stated constitutional and legal provision the phrase “father or mother” has been used by which it appears that in case any one out of father or mother has been Nepali citizen their children upon being mature by age could obtain Nepali citizenship. It is the matter of selection of the concerned person from whom out of the father or mother citizenship could be taken. In case application is filed with the submission of citizenship one out of father or mother it is not permissible by law to seek citizenship of others.
19. Over the issue of obtainment of citizenship by the name of the mother the case published on N.L.M. 2073 No.3 Decision No. 9687 of the petitioner Sujana Kharel vs. Office of Prime Minister and Council of Ministers writ petition mandamus, this court has established the principle that, “whereas the petitioner has demanded for the citizenship by the name of the mother it is not contextual where has the father gone or what has happened. Since there has been provision to have citizenship by the name of the mother the deprivation to the petitioner in obtainment of citizenship has been the work that seems contrary to law”.
20. In the case of similar nature published on N.L.M 2068 No. 2, Decision No. 8587 petitioner Sabina Damai et al vs. Office of Prime Minister and Council of Ministers as well, the writ petition for mandamus, the legal principle has been established by this court stating “Whosoever of the father or mother any one has been citizen of Nepal such person may acquire citizenship of Nepal”
21. In this way, on the basis of the afore state noted constitutional and legal provisions on legal principle established by this court as well, whereas the mother of this writ petitioner

Karan Bhusan Shakya has been the person of acquiring citizenship of Nepal by descent, this writ petitioner Karan Bhusan Shakya seems to be a person qualified to acquire Nepalese citizenship by descent. Therefore, the decision of District Administration Office, Kathmandu reached contrary to the constitution and law mentioning that the petitioner Karan Bhusan Shakya could not be provided with the Nepalese citizenship certificate on descent has been hereby declared void.

22. Whereas the petitioners are to be entitled for the right under the constitution and law and the remedies thereof, it is held that the mandamus order shall be issued to the opponent District Administration Office, Kathmandu to provide Nepali citizenship certificate on the basis of Regulation as well inquiring upon the essential matters on prompt basis upon finding out the content shown by the petitioner Karan Bhusan Shakya has not been otherwise.
23. Whereas writ petitioner Bhani Maiya Shakya seems to have become mother prior to the establishment of marital relationship being unmarried mother and the writ petitioner Karan Bhusan Shakya has been attempting to make identity by the name of his mother Bhani Maiya Shakya and the constitution and law as well have protected his right upon viewing the said context, it is held that the mandamus has been issued to the opponent Ministry of Education, District Education Office, Kathmandu and National Examination Board Sanothimi as well to deduct name of grandfather stated in the column of father of the academic certificates of the writ petitioner Karan Bhusan Shakya and induct the name of the mother the writ petitioner Bhani Maiya Shakya. Inform the opponent of this order through the Office of Attorney General, deduct the registration in diary and hand over the file to archive section as per the rule.

S/d

Chief

Justice

Agreed with the said opinion

Justice

S/d

Bench Officer: Ishwor Mani Ojha

Computer: Amir Ratna Maharjan

Done On: 2074/09/24/02 (Monday, 8th January, 2018)

Magh 25, 2074 (8th February, 2018)

Supreme Court

Division Bench

Right Honorable Chief Justice Gopal Parajuli

Honorable Justice Tank Bahadur Moktan

Decision

073-WO-01362

Case: Certiorari

Neha Das, Daughter of Nandan Das and Padam Maya Sunuwar, a resident of Ward No. 13 of Budhanilkantha Municipality of Kathmandu district1

Priya Das Daughter of Nandan Das and Padam Maya Sunuwar, a resident of Ward No. 13 of Budhanilkantha Municipality of Kathmandu district1 Petitioner
Plaintiff

Vs.

Nepal Government, Office of Prime Minister and Council of Ministers, Singha Durbar, Kathmandu1

Nepal Government, Ministry of Home, Singha Durbar, Kathmandu1

Nepal Government, Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, Singha, Durbar, Kathmandu1

Nepal Government, District Administration Office, Babarmahal, Kathmandu1 Opponent
Respondent

The fact in nutshell of this case filed under Article 133 (2) and (3) of the Constitution of Nepal being fallen under the jurisdiction of this court has been as follows.

1. We, the petitioners, have been victim persons being deprived of the Nepali citizenship. We have been the daughters of Nandan Das and Mrs. Padam Maya Sunuwar having address at Sunsari district, Ramgunj Belgachiya VDC ward No. 7 previously and Kathmandu district, Budhanilkantha Municipality ward No. 13 presently by being migrated. We the petitioners were born respectively on the date of 2053/07/24 (9th November, 1996) and 2057/02/24 (6 June, 2000) and have migrated with the father and mother from Sunsari in 2071 (2014). Our father and mother have been Nepali citizen. The mother has obtained Nepali citizenship by descent and the father has acquired Nepali citizenship on the basis of birth. We, the petitioners, have born in Nepal and completed study up to 10+2 herein and I, the petitioner, Priya has been studying

diploma level at present. I, the petitioner, Priya have completed age 20 years and I, petitioner Neha, have also completed age 17 years and accordingly we both sisters attended the District Administration Office, Kathmandu so as to make citizenship by filling up the form under Schedule-1, attaching the copy of our academic qualification certificate, birth certificate, migration registration, marriage registration of father and mother, citizenship of father and mother and recommendation of ward No. 13 of Budhanilkantha Municipality from where we were returned with rejection saying that prior to obtainment of citizenship certificate by our father we, the petitioners have been born and the citizenship of father has not been on the basis of descent but on the basis of birth so that we the petitioner could not acquire citizenship on the basis of descent, as a result, we the petitioners, the daughters of Nepali citizens being born, grown and having studied in Nepal have been deprived of right to identity in our own country, being obliged to

live in stateless condition, we are surrendering before this esteemed court. Article 10 (1) of the Constitution of Nepal makes provision that no citizens of Nepal shall be deprived of right to obtain citizenship. Article 11 (2) (B) makes provision that “If the father or mother of any person has been the citizen of Nepal at the time of his/her birth the person as such shall be citizen of Nepal descent.” Similarly, Article 11 (3) makes provision that prior to the commencement of this constitution the children of the citizen of Nepal having acquired the citizenship of Nepal by birth prior to commencement of this Constitution shall obtain the citizenship based on descent in case the father or mother both have been the citizens of Nepal, by being matured. As our mother and father both have been the Nepali having acquired the citizenship certificate.

We have fulfilled all the procedures under Article 11 (3) of the Constitution of Nepal so as to acquire Nepali citizenship certificate by descent and attended District Administration Office, Kathmandu, from where we were told that our citizenship could not be made and that the clear legal basis has not been prevalent in the present legal system to grant citizenship on the basis of descent and the issuance of descent citizenship certificate to us has been refused.

2. In addition to the provisions of our constitution and law the treaty and agreements ratified by Nepal being party have also pursued the right of citizenship as human right. Universal Declaration of Human Right (UDHR), 1948 Article 15 grants right to every person for citizenship. It provides that no person shall be arbitrarily deprived of his/her right to citizenship. The International Covenant on Civil and Political Rights, 1966 Article 24 provides that every child shall be registered immediately after birth and shall have a name, every child had the right acquire nationality.
3. Convention on Eliminating of All forms of Discrimination against Women Article 9 (2) mentions that State Parties shall grant women equal right with respect to the nationality of their children and accordingly our constitution and law as well make provision. However, the official under the bodies to grant citizenship have been arbitrarily depriving persons to have citizenship or identity and thereby extending injustice. As per Article 7 of Convention relating to Child provides that *the child should be registered immediately after birth and shall have the right from birth to a name, the right acquire a nationality and as far as possible the right to know and be cared for by his parents*. The provisions of the treaty and convention mentioned above have guaranteed the equal right to both man and women to grant

citizenship to man and women as a matter of equal right. Hence, the clear provision made to grant citizenship, the international treaty, agreements, our constitution and law but the wrong interpretation is drawn opposite to constitutional provision deprived from the identity to the person seeking identity to keep person stateless who wanted to get identified by agreement and treaty and thereby extended injustice.

4. All the obligations created by the convention mentioned above ratified by Nepal being a party which are considered to be basic documents have been accepted. On Article 279 of the Constitution of Nepal the ratification, participation and approval have been mentioned to be held as per law. By considering the afore stated provision of the constitution Section 9 (1) of the Nepal Treaty Act, 2047 pursued the said provision and clearly provided on Section 9 (1) that, in case the matter of treaty ratified by Nepal appears clashing with the prevalent law, it shall be held void to the extent of repugnancy for the purpose of treaty and the provision of treaty shall be enforced as equivalent to the national law of Nepal. As mentioned by treaty, our constitution and law as well also provided the right that the mother or father may grant citizenship or identity to the respective son and daughter. However, in practice the said enforcer of the said right has not been enforcing the said right and depriving us, the petitioner from the right to identity.
5. The said work of the opponent has been contrary to Article 10 (1), 11 (2) (B), 18 of the Constitution of Nepal, Universal Declaration of Human Rights, 1948 Article 15, International Covenant on Civil and Political Rights, 1966 Article 24 Convention relating to Child Rights Article 7, Women Convention, 1979, Article 9 as well and it has extended injustice to us. Hence, the afore mentioned official to grant citizenship has been interpreting the law and constitution in his own method and doing irresponsible behavior to the stakeholder by which we the petitioners have been unable to acquire citizenship we are deprived of the right granted by the constitution including right to equality, right to acquire citizenship, right to employment and the rights conferred by the International instruments relating to human rights including the right to equality, right to nationality and our right to have identity by ourselves. Therefore, the rejection order dated 2074/03/06 (20 June, 2017) of the District Administration Office, Kathmandu over the petition under Schedule-1 of ourselves with the entire documents from the District Administration office shall be declared void by the order of certiorari and let the order of

mandamus be issued to the opponent Home Ministry and District Administration Office, Kathmandu so that we the petitioners shall be provided with the descent citizenship. In addition, the mandamus and other appropriate order be issued to circulate to all the District Administration offices through the Home Ministry with the interpretation applying to all the victims like us of all over the nation. The writ petition dated 2074/03/13 (27 June, 2017) reads as such.

6. What has happened in this? Why should not the order be issued as per demand of the petitioner? In case the order be not issued, present the rejoinder with the basis and reason and, issue the notice to the opponent as per the rule for attendance. As the citizenship has been the extremely sensitive issue, grant priority hearing as per Rule 73 (1) of the Supreme Court Rules, 2074 and present accordingly. The order dated 2074/03/15 (29 June, 2017) reads as such.
7. The Home Ministry is always committed for the enforcement of the fundamental rights granted by the constitution. This Ministry has not done any work infringing the rights granted by the constitution and law. As the objective basis and reason have not been clear by the petitioner about what kind of directive and decision of the Ministry refused the opponent to grant citizenship the petition filed with the baseless and unclear demand arbitrarily making this Ministry opponent shall be avoidable. The rejoinder of Ministry of the Home reads as such.
8. This Ministry has no role and participation in granting citizenship certificate and there has been no clear citation that what kind of work and activities of the Ministry has infringed what kind of right of the petitioner, the petition filed by making the unrelated body to be respondent has been quash able. The rejoinder of the Ministry of Law, Justice and Parliamentary Affairs reads as such.
9. The opponent with petitioners have not been able to clearly point out what kind of work, activity or decision of the Office of the Prime Minister and Council of Ministers has infringed what kind of the constitutional and legal right of the petitioner. By remaining within the ambit of the constitution and law over the subject of recommendation for citizenship it is required to fulfill the prescribed process of law the matter as such shall not be termed otherwise. The rejoinder of the Office of the Prime Minister and Council of Ministers reads as such.
10. The owner of writ petitioner has obtained citizenship on the basis of birth of these petitioners. There has been no clear legal provision to confer citizenship based on descent/naturalization/ birth to the offspring of Nepali citizen having obtained Nepali

citizenship by birth. As the circular of Home Ministry dispatch No. 246 date 2069/09/12 (27th December, 2012) has also stopped to confer citizenship to the offspring of Nepalese citizens having obtained Nepali citizenship by birth the work and action of this office has been in line with the prevalent law and departmental policy, the present writ petition is quash able. The written response of District Administration Office, Kathmandu reads as such.

11. In his petition presented as per the rules, the learned advocate Sushma Gautam attending on behalf of the petitioner pleaded that Article 10(1) of the Constitution of Nepal guarantees that no Nepali Citizen shall be deprived of right to obtain citizenship and Article 11(2) B provides that the person whose father or mother has been the citizen of Nepal at the time of his/her birth such person shall be held citizen of Nepal by descent and Article 11(3) mentions that the offspring of the citizen having acquired citizenship of Nepal prior to the commencement of this constitution shall acquire citizenship of Nepal on the basis of descent after being matured in case both the father and mother both have been the citizen of Nepal, in the context of citation as such and neglecting the word existed on section 3(1) of Nepal Citizenship Act, 2063 mentioning the father or mother the District Administration Office, Kathmandu has issued rejecting order mentioning that the citizenship of the father of these petitioners, has been based on birth, which is avoidable on the basis of rights conferred constitutional, legal and international human rights related instruments therefore, the mandamus order shall be issued to grant descent citizenship to the petitioners Priya Das and Neha Das pursuant to the form under schedule-1 filled up by them, it has been heard.
12. Attending on behalf of the opponent, learned joint attorney Shyam Kumar Bhattarai pleaded that there has been no legal provision made in Nepal Citizenship Act, 2063 to grant citizenship on the basis of descent to the children of the Nepali Citizen father who acquired citizenship by birth before the birth of children. Although there has been provision made on Article 11 (3) the Constitution of Nepal to acquire citizenship on the basis of descent upon attaining maturity by the children of the citizen who acquired Nepali citizenship by birth prior to the commencement of this constitution, in case both the father and mother both have been the citizen of Nepal, the matter of acquiring citizenship has been the federal legal provision as per the constitution, it may be addressed. Condition is that due to lack of legal provision the demand of the petitioner has not been

- addressed. The issue raised by the petitioner has been addressed by article 11 (3) of the constitution and the matter needs federal law decision for implementation and the matter making law has been under the jurisdiction of the federal review, let the petition be quashed, it has been heard.
13. Hearing the afore stated pleading and studying the documents attached on the file, turning to decision, it shall be decided that whether or not the order be issued as per the demand in the writ petition of the writ petitioner.
 14. Turning to decision, the petitioners have been the daughters of Nepali citizen Nandan Das and Maya Sunuwar and both the sisters have applied by filling up the form under Schedule-1, so as to make citizenship along with recommendation of the Ward Committee by attaching the essential documents before the District Administration Office Kathmandu pursuant to Article 11(3) of the Constitution of Nepal so as to acquire citizenship on the basis of descent for which mentioning that the citizenship of the father of petitioner has been based on birth and the citizenship has been acquired after the birth of petitioner there has been no clear provision to confer citizenship by to the petitioner on the basis of descent the rejecting order has been made by the District Administration Office Kathmandu on the date 2074/03/06 (20 June, 2017) infringing the constitutional and legal right of the petitioner so that the said order shall be issued to the Home Ministry and District Administration Office, Kathmandu as well to cause to confer citizenship on the basis of descent to the petitioners and the mandamus order shall be issued to circulate through the Home Ministry applying interpretation to the victims as us all over the nation, the principal claim on the writ petition reads as such.
 15. The owner of writ petitioner has obtained citizenship on the basis of birth of these petitioners. There has been no clear legal provision to confer citizenship based on descent/naturalization/birth to the offspring of Nepali citizen having obtained Nepali citizenship by birth. As the circular of Home Ministry dispatch No. 246 date 2069/09/12 (27th December, 2012) has also stopped to confer citizenship to the offspring of Nepalese citizens having obtained Nepali citizenship by birth the work and action of this office has been in line with the prevalent law and departmental policy the present writ petition is quash able. The written response of District Administration Office, Kathmandu reads as such. The other opponents have filed written response that no constitutional and legal right of the writ petitioner, have been infringed.
 16. The father of the writ petitioner Nandan Das has acquired citizenship from the District Administration Office Sunsari on the date of 2063/10/07 (21 January, 2007) on the basis of birth and the mother Padam Maya Sunuwar acquired Nepali citizenship from District Administration Office Dolakha on the date of 2052/05/13 (29th August, 1995). No controversy is there that the father and mother of the petitioner both have been the citizen of Nepal. As it is proved by the birth certificates attached on the file that the petitioner Priya Das was born on 2053 Kartik 24 (09 November, 1996) and the other petitioner Neha Das was born on 2057 Jestha 24 (06 June, 2000), it seems that they have completed 16 years and qualified to acquire citizenship of Nepal as per the law of Nepal.
 17. Upon viewing over the main claim of the petitioner seeking for the Nepali Citizenship certificate on the basis of descent, sub-articles 1, 2 and 3 of Article 11 of the Constitution of Nepal shall be observed. Upon observing sub-articles 1, 2 and 3 of Article 11 of the Constitution of Nepal:

Section 11: To be held citizen of Nepal:

 - (1) A person who has acquired citizenship of Nepal at the time of commencement of this Constitution and the persons qualified to obtain citizenship under this chapter shall be the citizen of Nepal.
 - (2) The following person who has his or her permanent domicile in Nepal at the time of commencement of this Constitution shall be the citizen of Nepal by descent:
 - (a) A person who has obtained the citizenship of Nepal by descent prior to the commencement of this Constitution,
 - (b) A person whose father or mother was a citizen of Nepal at his or her birth.
 - (3) The offspring of the citizen having acquired the citizenship of Nepal by birth prior to the commencement of this constitution shall obtain the citizenship of Nepal by descent in case both the father and mother have been the citizens of Nepal.
 18. In analyzing the afore stated constitutional provision the petitioner seems entitled to obtain citizenship of Nepal in case the father mother have been the citizen of Nepal. In case the father and mother both, of the petitioner have acquired the citizenship of Nepal prior to the commencement of this constitution and despite the fact of being such citizenship to be based on birth the offspring of the citizen as such have been entitled for the obtainment of Nepali citizenship on the basis of descent, the constitution has clearly made provision as such.

Both the father and mother of the petitioners have obtained the Nepali citizenship certificate prior to the commencement of the constitution of Nepal. The father of these petitioners has obtained the citizenship by birth and the mother has obtained citizenship on the basis of descent. Hence, it could not be termed otherwise that these petitioners have been entitled to acquire Nepali citizenship certificate on the basis of descent.

19. Section 3 (1) of Nepal Citizenship Act, 2063 mentions that “In case of the person whose father or mother was a citizen of Nepal at his or her birth shall be held citizens of Nepal by descent”. By the provision as such too, there has been no obstruction posed for the entitlement of these petitioners to acquire Nepalese citizenship certificate.
20. Out of the instruments relating to the human rights in which Nepal has been a party, Article 7 of the Convention relating child grants right to Nationality and Article 8 makes provision that there shall be no kind of interference in ensuring the identity of the children and Article 5 (2) of the European Convention on Nationality, 1997 makes provision that Each state party shall be guided by the principle of non-discrimination between its nationals. Whether they are nationals by birth or have acquired its nationality subsequently, by the observation of the said provision it seems that there has been guarantee of the right of not to be discriminated by the international law to acquire citizenship on the basis of birth and descent.
21. Over the issue of obtainment of the citizenship based on descent by the offspring of the person having obtained the citizenship by birth this court has established legal principle on Sarthak Raut vs. Home Minsitry et al writ petition of certiorari and mandamus writ No. 073-WO-1115 that,” To impose prevention or restriction upon the use of the rights and powers, which have been conferred by the constitution and law, by government body shall be contrary to the rule of law and jurisprudential norm. Hence, as the petitioner shall have to use the rights and their remedies as per the Constitution and law, there is the condition that the writ petitioner shall have to obtain Nepali citizenship certificate by descent; hence, it is decided the mandamus order shall also be issued on the names of the opponents to provide the petitioner with Nepali citizenship certificate by descent as per rule.”

22. In this way, on the basis of the afore state national and international and the legal principles established by this court this court, whereas the father and mother of this writ petitioner have been Nepalese citizen and upon consideration of the birth registration certificates of the petitioner as well, the petitioners have been entitled to acquire Nepalese citizenship by descent, therefore, the decision of District Administration Office, Kathmandu dated 2074/03/06 (20 June, 2017) rejecting to provide the Nepalese citizenship certificate on descent to the petitioners has been hereby declared void by the order of certiorari as it is contrary to the constitution and law.
23. Whereas the petitioners are to be entitled to exercise the right under the constitution and law and the remedies thereof, it is held that the mandamus order shall be issued to the opponent District Administration Office, Kathmandu to provide Nepali citizenship certificate on the basis of Nepal Citizenship Act, 2063 and Nepal Citizenship Rules, 2063 as well, inquiring upon the essential matters on prompt basis upon finding out the content shown by or the content of claim of the petitioners, has not been otherwise.
24. Further, the mandamus order has been issued to the opponent Home Ministry, in order to circulate the concerned bodies throughout the nation to make essential provisions applying the interpretation like this to the petitioner of this kind, for the simplification and convenience over the matter of citizenship making appropriate ecision as per law. Give the information of this order to the opponents through the Office of Attorney General, hand over the file to the archive section deducting the diary record.

S/d

Chief

Justice

Agreed with the said opinion.

Justice

S/d

Bench Officer: Ishwor Mani Ojha

Computer: Amir Ratna Maharjan

Done On: 2074/10/25/05 (Thursday, 8th Feb, 2018)

Baisakh 03, 2075 (16th April, 2018)

Supreme Court
Division Bench
Honorable Justice Mira Khadka
Honorable Justice Hari Krishna Karki
Order
074-WO-0508
Subject: Including Certiorari

Bobby Thapa, a resident of Ward No. 9 of Chandragiri Municipality of Kathmandu district..1
 Iva Rajauriya, a resident of the same address as mentioned above.....1 Petitioner
 Vs.

Nepal Government, Office of Prime Minister and Council of Ministers, Singha Durbar,
 Kathmandu.....1

Nepal Government, Ministry of Home, Singha Durbar, Kathmandu1

Nepal Government, District Administration Office, Kathmandu1 Opponent

The fact in nutshell and order in this writ petition filed under Article 133 (2) of the constitution of Nepal have been as follows:

Daughter Iva Rajauriya was born on 2056/10/11 (January 25, 2000 A.D.), after I, the petitioner Bobby Thapa, had had love marriage with Ghanashyam Rajauriya, a resident of Dang District. The husband, Ghanashyam Rajauriya, who was working in the post of General Manager of Krishi Chun Udyog, Chobhar, had never taken us, the petitioners, to his permanent home address. After some years of the marriage, there was no environment to live together due to family quarrels; hence, I, the petitioner Bobby Thapa, have started to stay separately upon retaining the daughter, Iva, since the year 2059 (2002/03 A.D.). Upon being born and grown up in Kathmandu, the petitioner, Iva, is still staying at my parental home and her maternal uncle's home. Presently, after passing 10+2, she has desired to study nursing; hence, citizenship is required when she went to fill up the form for it; hence, while going to District Administration Office, Kathmandu on date 2074/10/7 (January 21, 2018 A.D.), upon obtaining recommendation from Office of Ward No. 9 of Chadragiri Municipality, identifying me, her mother, sanction order was given from there

to submit by attaching marriage registration, and petition form of Schedule-1, which states that citizenship certificate should be granted, was returned saying that citizenship certificate could not be issued until marriage registration of the parents was submitted; hence, I, her mother, could not provide citizenship certificate by identifying the daughter, and the daughter could not obtain citizenship certificate by identifying by me, her mother; hence, we have been deprived of obtaining several rights and powers to be obtained from the state. Besides ensuring right to citizenship, the provisions according to the provisions made by Articles 10 (1), 11 (2) (b), 12 of the Constitution of Nepal to obtain citizenship by descent with the name of mother or father have been made in Section 3 (1) of Nepal Citizenship Act, 2063 as well. The Provisions of the Treaties and Conventions including Article 15 of Universal Declaration on Human Rights, 1948, Article 24 of International Covenant on Civil and Political Rights, 1966, Article 9 (2) and Article 16 (d) of Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Article 7 of Convention on the Rights of Children, 1989 have guaranteed the rights of both women and men to provide citizenship. In such situations, due

to the patriarchal mind-set and behavior of the official of the body that provides citizenship, I, the petitioner Iva Rajauriya, have not got the citizenship upon being identified by my mother; hence, I am being deprived of right relating to equality, right to obtain citizenship, right to employment, right to do business chosen by me, right of education to achieve higher education, right to think with freedom, right of property, right to choose residence conferred by the Constitution, and right to equality, right to nationality conferred by International Manifesto on Human Rights, and the right to achieve my identity; hence, by revoking with certiorari order the sanction order made by the official of the opponent, District Administration Office to submit by getting marriage registration attached, order or command including mandamus order, whichever is necessary, should be issued to provide my daughter with the citizenship certificate based on descent from my address by identifying my me, her mother Bobby Thapa of the petitioners. Writ petition reads as above.

What has happened to this? Why is the order as per petitioner's claim not supposed to be issued? Submit as per rule after the affidavit is furnished or deadline is elapsed by sending off summon on the opponent's name upon attaching the replica copies of this petition and the order, asking to submit affidavit via the Office of Attorney General within 15 days excluding the travel time limit from the date of this order received by revealing in case there are basis and reason. Moreover, submit as per rule by giving preference to the present writ petition as per Rule 73 of the Supreme Court Rule, 2074, considering the seriousness of the content of the present petition. Order of this Court, on date 2074/10/24 (February 7, 2018 A.D.), reads as above.

Despite revealing the identity of father, the petitioner, Iva Rajauriya, has not submitted anywhere the document identifying her by her father as his child. Hence, since name is supposed to be mentioned in the chapter of father's name when father's identity of this petitioner is revealed, convincing document was demanded; hence, in the case of this petitioner, the act and action of this Office is as per law; hence, in the case of this Office, the present writ petition is prima facie revocable; hence, the stated writ petition should be revoked in the case of this Office. Affidavit of the opponent, District Administration Office, Kathmandu reads as above.

The Ministry of Home Affairs is always committed to protect and promote citizens' fundamental rights and powers conferred by the Constitution and law. Moreover, the Ministry of Home Affairs is

also sensitive regarding the content raised by the petitioner. Any citizen can obtain citizenship by fulfilling the process specified by law based on the qualification prescribed by the Constitution and prevailing law. Nepalese citizenship certificates are being issued by the Ministry of Home Affairs and bodies under it as per the Constitution and prevailing law. Nobody can obtain Nepalese citizenship without fulfilling ground and qualification prescribed by law. No act has been done by this Ministry to violate constitutional and legal rights of the petitioner conferred by the Constitution and law as per the claim of the petitioner. There is no condition against any citizen to be deprived of the right to citizenship guaranteed by the Constitution and prevailing law. The Ministry of Home Affairs is conducting its functions and actions by adopting the processes as per law upon remaining within the jurisdiction prescribed by the Constitution and law. This Ministry has not done any act to violate rights and powers of the citizens conferred by the Constitution and law by it and the body under it. The petitioner does not seem to have been able to reveal substantial ground and reason in the writ petition regarding what kinds of directives and decisions of the Ministry of Home Affairs have refused the opponent to be provided with citizenship. The Ministry of Home Affairs has not issued any order, directive and circulation to the bodies under it not to provide citizenship certificate contrary to the Constitution of Nepal and prevailing law. Hence, the writ petition filed upon rough estimation by laying baseless and unclear claim, making this Ministry the opponent in present context is revocable; in the case of this Ministry, the writ petition should be revoked. Affidavit of the Government of Nepal, Ministry of Home Affairs reads as above.

What kinds of acts, actions or decisions of the Government of Nepal, Office of the Prime Minister and the Council of Ministers have affected what kind of constitutional and legal rights and powers of the applicant? The opponents, writ petitioners, are not found to have been able even to mention it clearly. Writ petition cannot be filed by making this Office an opponent upon including the acts and actions and decisions happened and done by other bodies and office bearers authorized to carry out functions as per prevailing law. So far as the issue relating to acquisition of citizenship claimed by writ petitioners is concerned, regarding this, by making provisions relating to citizenship by Part 2 of the Constitution of Nepal, there is a constitutional provision in Sub-article (1) of Article 10 that no Nepalese citizen shall be deprived of

the right to obtain citizenship. Moreover, in Sub-article (2) of Article 11, by making provision that following persons who has his or her permanent domicile in Nepal at the time of commencement of this Constitution shall be the citizens of Nepal by descent, in Part (b) of the same Sub-article, there is provision that any person whose father or mother was a citizen of Nepal at the time of his or her birth may obtain citizenship by descent. Similarly, in Sub-section (1) of Section 3 of Citizenship Act, 2063, there is a provision that if a person whose father or mother was a citizen of Nepal at the time of his or her birth shall be a citizen of Nepal by descent. Regarding the issue of acts and actions to be performed by the office bearers having legal duty to make recommendation for citizenship and provide citizenship certificate by remaining under the stated constitutional and legal provisions, it shall be clear from the affidavits of the bodies concerned; hence, it is not necessary to mention in the present affidavit. Hence, the present writ petition should be revoked on the ground mentioned. Affidavit of the Government of Nepal, Office of the Prime Minister and the Council of Ministers reads as above.

In the present petition submitted to the Bench for the sake of decision upon being inducted to daily cause list as per rule, learned advocate Ms. Sushma Gautam, present on behalf of the petitioner, presented the pleading, stating that the petitioner, Bobby Thapa, had a love marriage with Ghanashyam Rajauriya, a resident of Dang district, and though, of the petitioners, Iva Rajauriya was born on date 2056/10/11 (January 25, 2000 A.D.), after some years of the marriage, due to family quarrels with the husband of this petitioner, there was no environment to live together; hence, there was condition that she had started to stay at parental home and maternal uncle's home, before having the deed of marriage registration, by retaining the minor daughter, Iva, since the year 2059 (2002/03 A.D.). After being born and grown up in Kathmandu, the petitioner, Iva, desired presently to study nursing after she had passed 10+2; hence, while going to fill up the form for the sake of it, citizenship was required; hence, upon obtaining recommendation from the Office of Ward No. 9 of Chandragiri Municipality to identify by her mother in the citizenship, while going to the District Administration Office, Kathmandu on date 2074/10/7 (January 21, 2018 A.D.), sanction order was given from there to submit after getting marriage registration attached, and returned the application of Schedule 1 that citizenship certificate should be granted, stating that citizenship certificate could not be issued until marriage registration had been submitted; hence, by revoking the sanction order,

which was issued by the official of the opponent District Administration Office contrary to the legal provision contained including in Section 3 (1) of Nepal Citizenship Act, 2063 to submit after getting marriage registration attached, with certiorari order, order and command including mandamus order, whichever is needed, should be issued to provide citizenship certificate by descent from the address of the petitioner, Bobby Thapa, identified the petitioner, daughter Iva. Similarly, pleading was also heard, which was made by learned Joint-attorney, Mr. Shyam Kumar Bhattarai, present on behalf of the petitioners, stating that by making provision relating to citizenship by Part 2 of the Constitution of Nepal, there is constitutional provision in Sub-article (1) of Article 10 that no Nepalese citizen of the right shall be deprived of obtaining citizenship. Moreover, by making provision in Sub-article (b) of Article 11 that following person having permanent domicile in Nepal at the time of the commencement of this Constitution shall be a citizen of Nepal by descent, provision has been made in Part (b) of the same Sub-article that a person whose father or mother was a citizen of Nepal at the time of his or her birth may obtain citizenship by descent. Similarly, there is provision in Sub-article (1) of Section 3 of Citizenship Act, 2063 that a person whose father or mother was a citizen of Nepal at the time of his or her birth shall be a citizen of Nepal by descent; hence, when the identity of her father was revealed, father's name was supposed to be mentioned for providing the petitioner, Iva Rajauriya, with citizenship, just convincing document was demanded, but refusal was not made to provide citizenship; hence, the present writ petition should be revoked.

While looking upon studying the document file including the present writ petition, there is a principal petition claim that by revoking sanction order with the certiorari order, which was made by the official of District Administration Office to submit after getting marriage registration attached, order and command including mandamus, whichever is needed, should be issued to provide my daughter, Iva Rajauriya, with citizenship certificate by descent from my address by me, her mother Bobby Thapa; whereas, it seems that there are opponents' affidavits stating that when the identity of her father was revealed, father's name was supposed to be mentioned for providing the petitioner, Iva Rajauriya, with citizenship; hence, just a convincing document was demanded, but refusal was not made to provide citizenship; hence, the present writ petition should be revoked.

Upon the present writ petition, it appears that

decision is supposed to be made regarding whether the order as per petition claim is supposed to be issued or not.

While considering towards the decision, in this, stating that citizenship certificate of Nepal should be granted, the writ petitioner, Iva Rajauriya, furnished application to District Administration Office, Kathmandu, in the format of Schedule 1 of Nepal Citizenship Act, 2063, attaching replica copies of citizenship certificates by descent issued by District Administration Office, Kathmandu on the names of mother, Bobby Thapa, and father, Ghanashyam Rajauriya, birth registration certificate of the date of 2074/10/5 (January 19, 2018 A.D.) mentioning Iva Rajauriya, daughter of mother, Bobby Thapa, and father, Ghanashyam Rajauriya, character certificate on the name of Iva issued on date 2071/3/17 (July 1, 2014 A.D.) by Bright Future Secondary School, stating Iva Rauniyar, daughter of Ghanashyam Rajauriya, spot investigation deed made in the presence of representatives of local body, Ward Secretary of Ward No. 9 of Chandragiri Municipality by local residents, stating that father of the petitioner, Iva Rajauriya, was Ghanashyam Rajauriya and mother was Bobby Thapa; whereas, it seems that citizenship form was returned to the petitioner by that Office by giving sanction order to Citizenship Section to submit after getting marriage registration attached. In this context, while looking into the prevailing constitutional and legal provisions made relating to the acquisition of citizenship certificate of Nepal by descent, it is found to have been mentioned in Article 10 (1) of Part 2 of the Constitution of Nepal that no Nepali citizen shall be deprived of the right to obtain citizenship, whereas, with relation to deeming the citizen of Nepal by descent, in Article 11 (2), (3), (4) and (5), provisions are found to have been made as follows:

“11. *To be citizens of Nepal-* (2) *The following person who has his or her permanent domicile in Nepal at the time of commencement of this Constitution shall be the citizen of Nepal by descent:*

- (a) *a person who has obtained the citizenship of Nepal by descent prior to the commencement of this Constitution,*
- (b) *a person whose father or mother was a citizen of Nepal at his or her birth.*
- (3) *A child of a citizen having obtained the citizenship of Nepal by birth prior to the commencement of this Constitution shall, upon attaining maturity, acquire the citizenship of Nepal by descent if*

the child's father and mother both are citizens of Nepal.

- (4) *Every minor who is found within Nepal and the whereabouts of whose father and mother are not known shall, until the father or the mother of the child is traced, be a citizen of Nepal by descent.*
- (5) *A person who is born in Nepal from a mother who is a citizen of Nepal and has resided in Nepal and whose father is not traced shall be provided with the citizenship of Nepal by descent.*

Provided that his or her father is held to be a foreign citizen, the citizenship of such person shall be converted into naturalized citizenship as provided for in the Federal law.”

By making provisions in Section 3 of Nepal Citizenship Act, 2063 relating to the acquisition of Nepalese citizenship by descent, regarding the application to be furnished for the acquisition of citizenship certificate, provisions are found to have been made in Section 8 of the same Act as follows:

“3. *Acquisition of citizenship by descent-* (1) *A person whose father or mother was a citizen of Nepal at his or her birth shall be a citizen of Nepal by descent.*

(2) *Notwithstanding whatever has been written in Sub-section (1), in case of the child born from a woman who is a Nepali citizen who is married to foreign citizen, it shall be as per Sub-section (2) of Section 5.*

(3) *Every minor who is found within the territory of Nepal, the whereabouts of whose father and mother are not known shall be held a citizen of Nepal by descent until his or her father or mother is not traced.*

(8) *To apply for acquisition of citizenship certificate-* (1) *The person wishing to obtain Nepalese citizenship certificate as per Section 3, who has completed the age of sixteen years shall have to apply before the official prescribed by including following replica copies:*

- (a) *Nepalese citizenship certificate of father or mother or the relative within three generations towards his or her lineage, however, in case of Nepali citizen woman who is married to a foreign citizen, this provision shall not be applicable.*
- (b) *Recommendation made by Rural Municipality or Municipality revealing birthplace and relation.*

Similarly, regarding the acquisition of Nepalese

citizenship by descent, provisions of procedures are found to have been made in Rule 3 (1), (2) and (5) of Nepal Citizenship Act, 2063 as follows:-

“3. *Procedures to obtain Nepalese citizenship certificate by descent: (1) The Nepali citizen wishing to obtain Nepalese citizenship certificate who has completed the age of sixteen years shall have to furnish application to the Chief District Officer concerned in the format as per Schedule-1 by attaching the documents as follows:-*

- (a) *Nepali citizenship certificate of father or mother or the relative within three months towards his or her lineage,*
 - (b) *Recommendation made by local body concerned revealing birthplace and relation or birth registration certificate,*
 - (c) *When citizenship certificate of the relative within three generations as per Part (a) is submitted, relation certified letter revealing relation with the stated relative.*
- (2) *Nepali citizenship certificate may be provided for the Nepali citizen who cannot submit the evidence as per Sub-rule (1) on the basis of following documents:*
- (a) *Spot investigation made in the format Schedule-3 by local residents, who have Nepali citizenship certificate, in the presence of the representatives of the local body, revealing the description that since the father or mother of the petitioner are Nepali citizens, he or she is a citizen of Nepal by descent; and has been permanently residing within the territory of Nepal regularly after being born in Nepal,*
 - (b) *Identification made by three Nepali citizens, who have obtained Nepali citizenship certificate and who are residing in the Ward concerned, on the spot of investigation in the format as per Schedule-4.*

Provided that, in case the official who makes recommendation of citizenship or who provides citizenship feels that the person who makes identification has identified suspiciously, such official may carry out additional investigation upon this.

(5) While carrying out investigation upon the application received as per Sub-rule (1) or (3), in

case the applicant seems to be qualified to obtain citizenship certificate by descent, he or she may be provided with citizenship certificate by descent.”

While looking into the constitutional and legal provisions quoted above, provision does not seem to have been made to submit marriage registration certificate of Nepali father and mother for the sake of obtaining Nepali citizenship certificate by descent. By attaching documents needed for the sake of obtaining citizenship certificate by descent as per Nepal Citizenship Act, 2063, the writ petitioner, Iva Rajauriya, seems to have submitted to District Administration Office, Kathmandu, by filling up the form as per the format prescribed in Schedule 1 of the same Act, stating that Nepali citizenship certificate should be granted; whereas, the opponents do not appear to have been able to say otherwise to this matter in the affidavits either. From the birth registration certificate of the date of 2074/10/5 (January 19, 2018 A.D.) in which it is mentioned that this applicant, Iva Rajauriya, is daughter of the mother, Bobby Thapa, and father, Ghanashyam Rajauriya, replica copy of the deed of spot investigation made by the representatives of local body in the presence of the Ward Secretary of Ward No. 9 of Chandragiri Municipality, local residents who have obtained Nepali citizenship revealing including the address of the applicant and character certificate on the name of Iva issued by Bright Future Secondary School on date 2071/3/17 (July 1, 2014 A.D.), too, this petitioner seems to have been the daughter of Ghanashyam Rajauriya; in this condition, the fact that father of the applicant, Iva Rajauriya, is Ghanashyam Rajauriya cannot be said otherwise. From the replica copies of the citizenship certificates, condition seems that both mother and father of the petitioner, Iva Rajauriya, have obtained citizenships by descent. Similarly, from the document file, the Ward Chair of Ward No. 9 of Chandragiri Municipality seems to have recommended for providing this applicant with citizenship certificate. Thus, the applicant seems to have submitted all the documents needed for obtaining citizenship by descent, along with the application, pursuant to Sections 3 and 8 of Nepal Citizenship Act, 2063 and Rule 3 of Citizenship Rule, 2063. It neither seems legal nor wise to deem otherwise to these evidences submitted along with the application by the applicant, stating that citizenship certificate should be granted by descent. In this context, when all the documents necessary for giving and taking citizenship certificate by descent have been submitted in line with rule as per prevailing law, the body that has the duty to

provide citizenship certificate by descent as per law is not found to have fulfilled its legal duty. For the sake of doing any work as per prevailing law, when conditions prescribed by law have been fulfilled and rule is attained by the office bearer or the body to whom legal duty and responsibility has been assigned for the sake of doing such work, it does not appear just and legal to refuse or delay to do such work by making any other pretensions.

Hence, from the ground and reason analyzed above, it is decided that mandamus order shall be issued on the names of the opponents to provide her with citizenship certificate in case the applicant, Iva Rajauriya, comes to make demand for citizenship certificate by descent by keeping aforementioned deeds, documents, evidences attached. By providing

the opponents with the information of present order, submit the document file to the record section by doing electronic upload of the copy of the order, striking off the registration of case-file.

S/d
Judge

I agree with the said opinion.

S/d
Justice

Bench Officer: Shiva Prasad Parajuli
Computer Operator: Uttar Man Rai

Done On: 2075/01/03/02 (Monday, 16th April, 2018)



Baisakh 31, 2075 (14th May, 2018)

Supreme Court

Division Bench

Honorable Justice Kedar Prasad Chalise

Honorable Justice Dambar Bahadur Shahi

Decision

Case No. 072-CI-0718

Case: Mandamus

Lucky Sharma grandson of Tara (Chandra) Lal Sharma, son of Ram Lal Sharma, a resident of Ward No. 9 of Hetauda Sub-metropolis of Makawanpur District

Appellant
Petitioner

Vs.

District Administration Office, Makawanpur, Hetauda

Chief District Officer, Ram Prasad Thapaliya of the same Office

Dilip Shrestha, Non-gazette 1st Class of Citizenship Section of the same Office

Respondent
Opponent

Initially decided by:

Honorable Judge Bishwambhar Prasad Shrestha

Ms. Yubraj Subedi

Appellate Court, Hetauda

Decision Date: 2072/03/30 (15th July, 2015)

The fact in nutshell and decision in this case filed over the order of the Appellate Court Hetauda dated 2072/03/30 (15th July, 2015) before this court as per Section 9 of the Judicial Administration Act, 2048 have been as follows.

Section of Fact

- I, the petitioner, am the fourth child of mother, Indu Kumari Thapa Sharma, and father, Ram Lal Sharma. My father was not able to obtain his citizenship because Tara (Chandra) Lal Sharma, the father, and mother of my father, Ram Lal Sharma, had died in his young age. As my parents used to previously live in district Dhanusha, Sakhuwa Mahendra Nagar, Ward No. 2, my parents married at the same place; and situation is that upon migrating from that place on 2040/10/5 (January 19, 1984 A.D.), after the marriage, my parents they have been

living by building a house in Hetauda Sub-metropolitan City, Ward No. 9, Lamsure. After being born in Hetauda Sub-metropolitan City, Ward No. 9, Lamsure, I, the petitioner, started studying at Pragati Higher Secondary School situated at the same Ward; after passing S.L.C. examinations from the same School, I passed Grade 12 from Hetauda School of Management and have studied the bachelor's level, too, from the same college. Because my father does not have citizenship, I obtained the citizenship of C.C.No. 31-01-71-11259, on date 2071/12/04 (March 18, 2015 A.D.), from the opponent, District Administration Office, Makawanpur by submitting necessary documents, including the citizenship of the mother, Indu Kumari Thapa as per the Citizenship Act and Rule; but, the Section Clerk of the Citizenship Section of the opponent Office called me via phone on the following day, i.e. 5th (March 19), telling me to go taking the citizenship because signature was missing in my citizenship; hence, I went to the opponent Office on that day taking my citizenship and submitted it to Mr. Dilip Shrestha, a first class non-gazetted

officer of Citizenship Section of the opponent, District Administration Office, Makawanpur, Hetauda; but the situation is that he has not returned the citizenship to me. In this regard, I frequently asked him for the citizenship, he did not return the citizenship by making various pretensions; and presently, he replied, saying that application should be furnished to the Chief District Officer in this regard; hence, I went to demand the genuine copy of my Nepali citizenship certificate, attaching along with my application the photocopy of the citizenship certificate obtained by me, I furnished the application to the opponent Office mentioning the same description, stating that the stated citizenship certificate, which I received from the opponent Office as per rule, should be returned, but Dilip Shrestha, first class non-gazeted officer of Citizenship Section, was dilly dallying saying that the Chief District Officer was busy in the relief work of earthquake victims; and after eventually meeting with the Chief District Officer, Ram Prasad Thapaliya, when he was informed regarding that matter, he rudely replied that he could not give the citizenship which had been taken back, and application would not be registered either. The opponents have refused to provide me with the citizenship of Nepal which I had obtained by fulfilling legitimate process; hence, mandamus order should be issued to return my genuine Nepali citizenship certificate of my name, which has been seized by the opponents. Petition filed at Appellate Court, Hetauda by the petitioner, Lucky Sharma, reads as above.

2. What has happened on this? Is the order supposed to be issued as per petition claim or not? Submit by doing as per rule after the affidavit is furnished or deadline is elapsed by issuing summon and notice on the name of the opponents, attaching the replica copies of the petition as well as the order, stating that affidavit should be submitted through Appellate Government Attorney Office, Hetauda within (fifteen) days except for the travel time limit from the date of the notice of summon served, by mentioning any basis and reason, if there is any, that such order is not supposed to be issued. Order made by Appellate Court, Hetauda on 2072/02/19 (June 2, 2015 A.D.) reads as above.
3. As the petitioner, Lucky Sharma, submitted citizenship schedule by attaching to it the recommendation of this Office in order to obtain citizenship as per Nepal Citizenship

Act and Rule, citizenship of descent of C.C.No. 31-01-71-11259 was issued on him by this Office on date 2071/12/4 (March 18, 2015 A.D.) with the identification of the mother, Indu Kumari Sharma. Since public complaint was heard including in local newspapers regarding the stated citizenship obtained by him as the citizenship of descent issued without father's citizenship, while immediately carrying out inquiry regarding the citizenship obtained by him, even the evidence and citizenship certificate revealing birthplace and date of birth of his father, Ram Lal Sharma, did not seem to have been submitted; hence, presently the citizenship certificate, which had been provided for this Lucky Sharma on the basis of descent, was cancelled with the decision of the date of 2071/12/08 (March 22, 2015 A.D.) so that preferential action would take place after the evidence and citizenship certificate revealing birthplace and date of birth is submitted; hence, the matters revealed in the writ petition by the writ petitioner seem to be based not on fact; hence, the description of the writ petition is revocable; it should be revoked. Affidavit of District Administration Office, Makawanpur and Chief District Officer of the same submitted to Appellate Court, Hetauda reads as above.

4. As the petitioner Lucky Sharma submitted citizenship schedule by attaching to it the recommendation of this Office in order to obtain citizenship as per Nepal Citizenship Act and Rule, citizenship of descent of C.C.No. 31-01-71-11259 was issued on him by this Office on date 2071/12/4 (March 18, 2015 A.D.) with the identification of the mother, Indu Kumari Sharma. Since public complaint was heard including in local newspapers regarding the stated citizenship obtained by him as the citizenship of descent issued without father's citizenship, District Administration Office, Makawanpur immediately carried out inquiry regarding the citizenship obtained by him; hence, the petitioner was told to submit evidence documents possessed by him because inquiry was undergoing. In course of inquiry, evidence and Nepali citizenship certificate revealing birthplace and date of birth of this petitioner's father, Ram Lal Sharma, also did not seem to have been submitted; hence, presently the citizenship certificate, which had been provided for Lucky Sharma on the basis of descent, was cancelled by the decision of the date of 2071/12/08 (March 22, 2015 A.D.) to take action again after the evidence and citizenship

certificate revealing birthplace and date of birth is submitted; hence, the matters revealed in the writ petition by the writ petitioner do not seem to be based on fact; hence, the writ petition is revocable; hence, it should be revoked. Affidavit submitted to Appellate Court, Hetauda by first class non-gazetted officer of District Administration Office and Chief District Officer of the same reads as above.

5. Nepali citizenship certificate claimed by the petitioner to get it returned seems to have been revoked by the decision of the opponent Office; hence, legal recognition of the revoked citizenship seems to have been void until it is made otherwise. In this way, from the affidavit, it seems that the Nepali citizenship claimed by the petitioner to get it returned is no longer in legal existence after it has been revoked; hence, the conditions does not appear to return to the petitioner the stated citizenship certificate, which is not existing. In the situation that the opponents have refused or dilly-dallied to fulfill the duty as per law or seem to have not complied with the duty assigned as per law, the condition does not exist to issue the order as per petition claim. Hence, from the affidavits of the opponents, it appears that the Nepali citizenship certificate, which is said to have been obtained by the petitioner by descent and claimed by the petitioner, Lucky Sharma, appears to have been cancelled with the decision of the opponent, District Administration Office, Makawanpur of the date of 2071/12/08 (March 22, 2015 A.D.); hence, mandamus order is not supposed to be issued as per petition claim. It is decided that the writ petition shall be revoked. Order of the Appellate Court, Hetauda of the date of 2072/03/30 (July 15, 2015 A.D.) reads as above.
6. The order of the Appellate Court, Hetauda is not satisfactory. In the Interim Constitution of Nepal, 2063 and Nepal Citizenship Act, 2063 and the Constitution of Nepal, 2072 as well, there are clear provisions to obtain citizenship by descent by the name of mother or father. Public complaint was heard even in the condition that citizenship was obtained with the identification of mother, by fulfilling all the processes as per the provision of the Interim Constitution and Nepal Citizenship Act, and the work of seizing my citizenship by showing the reason that there was not birthplace, citizenship and other evidence to reveal the identity of the father, while carrying out inquiry, has contradicted to the Interim Constitution and

Citizenship Act. My right to become a citizen has also been affected by the stated act of the opponent. The opponents' work of snatching my citizenship certificate issued on my name to contradict to the precedent propounded even by the esteemed Supreme Court in N.L.M. 2068, Number 2, P. 247 having Sabina Damai versus including the Office of the Prime Minister and the Council of Ministers, as well as the precedent propounded to provide citizenship by descent by the name of the mother even in the case having Ranjit Thapa versus including District Administration Office, Kathmandu Writ No. 065-WO-0035 of the year 2065, Decision Date: 2066/03/12 (June 26, 2009 A.D.) is illegal and unjust. Only in the condition that my father was a foreign citizen and my mother was a Nepali citizen, I, the petitioner, could not be the recipient of the citizenship by descent. But, both my parents being Nepali citizens, there is the only condition that the father has not obtained Nepali citizenship certificate. In this context, in the condition that precedent has been propounded in N.L.M. 2067, Number 4, P. 600, stating that to say that one is not a Nepali citizen simply because the citizenship certificate has not been obtained could not be justified, the opponent's work is contrary to the stated precedents. Hence, by revoking the order made by the Appellate Court, Hetauda to revoke the writ petition, mandamus order should be issued on the names including the opponent Office to provide or get me, the appellant, provided with citizenship by descent by the name of mother. Appeal of the petitioner filed in this Court reads as above.

Decision section

7. After studying including the initial genuine document file along with the appeal of the present case that has been submitted to the Bench upon being inducted to the cause list of the weekly and daily case as per rule, while looking into upon hearing the pleadings made by learned advocate and joint-attorney on behalf of both the petitioner and the opponent in the related certiorari case of 072-WO-0630 filed by the same appellant against the same opponents, decision seems to be made on whether the order of the Appellate Court, Hetauda of the date of 2072/03/30 (July 15, 2015 A.D.) is congruent or not; and, whether the appellant's appeal pleading is sufficient or not.
8. In this, while considering towards the decision, order seems to have been made by the Appellate

Court, Hetauda on date 2072/03/30 (July 15, 2015 A.D.), stating that, in the present case, there was the writ petition that the opponents had seized the citizenship by calling him, the petitioner, to the Office on the following day of the citizenship provided by the District Administration Office, Makawanpur as per rule, and refused to return it; hence, mandamus order should be issued on the names of the opponents to return the genuine citizenship obtained by him; whereas, there were the affidavits of including the opponent District Administration Office, including that evidence and Nepali citizenship certificate revealing the birthplace and date of birth of the petitioner's father, Ram Lal Sharma, did not seem to have been submitted; hence, the Nepali citizenship certificate provided for the petitioner by descent was cancelled with the decision of the date of 2071/12/08 (March 22, 2015 A.D.), from the affidavits of the opponents, it seemed that the Nepali citizenship certificate which was said to have been obtained on the basis of descent by the petitioner, Lucky Sharma, and demanded by him was cancelled with the decision of the opponent, District Administration Office, Makawanpur of the date of 2071/12/08 (March 22, 2015 A.D.); hence, it is decided that mandamus order was not supposed to be issued as per petition claim; writ petition should be revoked. There is the condition that, being dissatisfied with that decision, appeal has been filed in this Court on behalf of the petitioner stating that the order of the stated Appellate Court, Hetauda is contrary to the legal and constitutional provisions of Nepal Citizenship Act, 2063, the Interim Constitution of Nepal, 2063, the Constitution of Nepal, 2072 and the precedents propounded by this Court, hence, should be revoked.

9. After the present appeal had been filed, mandamus with certiorari writ petition of 072-WO-0630 was again filed in this Court

upon the same opponents by becoming the same appellant a petitioner on date 2072/11/20 (March 3, 2016 A.D.); hence, the document files including the present appeal and the stated writ petition have been simultaneously submitted today for the sake of decision; and, on the stated mandamus with certiorari writ petition of 072-WO-0630, by revoking with the certiorari order the decision of the date of 2071/12/08 (March 22, 2015 A.D.) made by District Administration Office, Makawanpur, Hetauda to cancel the Nepali citizenship certificate obtained by this appellant on the basis of descent, by deeming that mandamus would also be issued on the name of District Administration Office, Makawanpur to issue Nepali citizenship certificate by descent on the name of this petitioner, and upon the issue of the remedy demanded, remedy has been received while making order from this Court today; hence, from the evidence and reasons mentioned in the order of the stated mandamus with certiorari writ petition of 072-WO-0630 as well, it seems that the order of Appellate Court, Hetauda shall not be valid. Hence, it is decided that the order of Appellate Court, Hetauda of the date of 2072/03/30 (July 15, 2015 A.D.), which deemed that petition claim of the writ petitioner could not be sufficient shall be revoked. By striking off the account of the case-file, submit the document file to the record section.

S/d

Justice

Agree with the said opinion.

S/d

Justice

Bench Officer: Jayaram Shrestha

Computer: Chandrasher Rana

Done on 2075/01/31/02 (Monday, 14th May, 2018)

Asoj 28, 2075 (13th September, 2018)

Supreme Court

Division Bench

Honorable Justice Dipak Kumar Karki

Honorable Justice Tej Bahadur K.C.

Order

074-WO-0518

Case: Including Certiorari

Arjun Kumar Shah, a resident of Ward No.8 Matiahni Municipality Matihani of Mahottari district	1	Petitioner
Vs.		
District Administration Office, Kathmandu	1	
Nepal Government, Ministry of Home, Singha Durbar, Kathmandu	1	
Office of ward No.8 of Matiahni Municipality Matihani of Mahottari District	1	
Ministry of Law, Justice and Parliamentary Affairs Singha Durbar, Kathmandu	1	
Office of Prime Minister and Council of Ministers, Singha Durbar, Kathmandu	1	
Secretariat of Legislative Parliament, Singha Durbar, Kathmandu	1	
Rastriya Banijya Bank, Jaleswor Branch, Mahottari	1	Opponent

The fact in nutshell and order in this writ petition fallen under the jurisdiction of this court under Article 46 and 133 (2) (3) of the constitution of Nepal have been as follows.

1. I, the petitioner, am a Nepali citizen. I was born in Mahottari district, Matihani V.D.C., Ward No. 8. My mother, Mithila Kumari, has obtained citizenship of Nepal by descent; whereas, father, Arun Shah, has been residing in Nepal for the last of 38 years, however, the situation is that he has not obtained citizenship of any country. Because of the lack of my Nepali citizenship, I have been deprived of using fundamental rights conferred by the Constitution and legal rights and powers. Besides facing problems daily with the lack of citizenship certificate, I have not been able to further the studies either. Since the body concerned has not provided me with citizenship certificate of Nepal, my fundamental rights and constitutional rights, particularly the right to freedom conferred by Article 17, right to equality conferred by

Article 18, right to property conferred by Article 25, right to education conferred by Article 31 and right to employment conferred by Article 33 of the Constitution of Nepal have been affected. On the ground that citizenship was supposed to be obtained as per Sub-article (7) Article 11 of the Constitution of Nepal, when I went to district Mahottari, Office of Matihani Municipality, Ward No. 8, Matihani for getting recommendation of citizenship certificate, I was denied to be provided with recommendation stating that there was no law. Even upon informed of this matter, District Administration Office, Mahottari has not held any hearing, stating that no order has been issued by the Ministry of Home Affairs. Moreover, when I furnished application to open a bank account in Rastriya Banijya Bank, Jaleswor Branch, Mahottari on date 2074/10/22 (February 5, 2018 A.D.) along with the replica copies of citizenship certificate of my mother, my voter's identity card and my

birth registration, account has not been opened stating that account cannot be opened due to not having citizenship. Hence, I have come to the esteemed Court after having been fallen into injustice as I have not been allowed to use any rights and powers with the status of a Nepali citizen. The Constitution of Nepal, 2072 was promulgated while the case filed by me for the sake of obtaining Nepali Citizenship by descent as per Article 8 (2) of the Interim Constitution of Nepal, 2063 was sub judice in the esteemed Supreme Court; hence, this writ petition has been filed to obtain Nepali citizenship as per Article 11 (7) of the Constitution of Nepal. There is a situation that mandamus was issued to provide Nepali citizenship certificate in the mandamus case of No. 074-WO-0050 of Sweta Srivastav, making including the Ministry of Home Affairs an opponent, the mandamus case of No. 072-WO-1093 of Prabhat Kumar Shantanu and Mandamus case of No. 074-WO-0159 of Sakar Singh as well, which were of such nature. Regarding this, Case No. 067-WO-0703 of Part 53, Number 2, Page No. 247, D.No. 8557, of Sabita Damai versus Office of the Prime Minister and the Council of Ministers is also attracted.

2. Hence, on the basis of the fact mentioned, the Constitution of Nepal, prevailing law and the precedents propounded by the esteemed Court, order should be issued as per Article 133 (2), (3) of the Constitution of Nepal. (a) Order made by Rastriya Banijya Bank, Jaleshwor Branch, Jaleshwor, Mahottari on date 2074/10/22 (February 5, 2018 A.D.), affecting on the fundamental rights conferred by the Constitution of Nepal, not to open the account should be revoked with certiorari order. (b) Due to being fully qualified and able to obtain citizenship as per Sub-article (7) of Article 11 of the Constitution of Nepal, citizenship certificate is to be ipso facto made, but district Mahottari, Office of Matihani Rural Municipality, Ward No. 8 has been dilly-dallying by showing legal hurdles; hence mandamus on the names of the opponents, except for Rastriya Banjya Bank, stating to provide or get citizenship certificate provided, (c) Moreover, even in the condition that nearly two and a half year of the promulgation of the Constitution of Nepal is about to approach, the law and rule relating to citizenship have not been made yet; hence, various kinds of legal and practical hurdles have cropped up; hence, mandamus order should be issued on the names of the

opponents including the Government of Nepal and the Legislative-Parliament for the sake of immediately making act, rule relating to citizenship; moreover, by issuing interim order on the names of the opponents not to do any work and actions relating to sanction order of the opponent, Rastriya Banijya Bank, and do or get necessary support and coordination done so as not to deprive of the service and facility including opening up bank account, studying which are to be obtained, until the writ petition has been finalized, hearing should be held by granting preference to the present petition. Petition claim reads as above.

3. What has happened in this? Why is not the order as per the petitioner's claim supposed to be issued? Submit as per rule after the affidavits are furnished or the deadline is elapsed by sending off notice by attaching including the replica copies of this order and writ petition to submit affidavit within 15 days except for travel time limit, in case of opponents No. 3 and 7, themselves or through their representatives as per law, and through the Office of Attorney General in case of other opponents. While looking towards the interim order claimed, dispute is not seen that Mithila Devi Sah, mother of the petitioner Arjun Kumar Sah, has had Nepali citizenship. Birth registration certificate has been submitted stating that this petitioner was born within Nepal. Since situation has appeared to deprive the petitioner, who is said to have been born within Nepal from Nepali mother, of opening account in the bank, studying at teaching institute simply because of not having Nepali citizenship, it seems that irreparable loss is likely to be immediately inflicted upon the petitioner; hence, interim order has been issued on the names of the opponents as per Rule 49 (2) (a) of Supreme Court Rule, 2074 not to prevent from opening account in Rastriya Banijya Bank, studying in teaching institute and not to deprive of the facility to be obtained by the citizen in the case of the petitioner until the present petition has been finalized; do as per rule by providing the opponents with its information. Order made by this Court on date 2074/10/26 (February 9, 2018 A.D.) reads as above.
4. By making provision relating to citizenship by Part 2 of the Constitution of Nepal, there is provision in Sub-article (1) of Article 10 that no Nepali citizen shall be deprived of the right to obtain citizenship. In Sub-article 7 of Article 11, there is provision that notwithstanding anything

contained elsewhere in this Article, in the case of a person born from a woman who is a citizen of Nepal and married to a foreign citizen, the person may acquire the naturalized citizenship of Nepal in accordance with the Federal Law if he or she has permanently resided in Nepal and has not acquired the citizenship of the foreign country. In Sub-section (2) of Section 5 of Citizenship Act, 2063, there is a provision that in the case of the child born in Nepal from a woman who is a Nepali citizen and married to a foreign citizen, he or she may be provided with naturalized citizenship as prescribed if he or she has permanently resided in Nepal and has not obtained the citizenship of the foreign country on the basis of the citizenship of the father. It is just a provision to provide naturalized citizenship as per directed rule and process of law by remaining under the stated constitutional and legal provision. So far as the issue that the petitioner did not obtain the citizenship certificate though he wanted to get is concerned, it is not supposed to be mentioned additionally regarding this in the present affidavit because it shall be clear from the affidavit of the body concerned. Present writ petition should be revoked. Affidavit furnished to this Court on behalf of the Office of the Prime Minister and the Council of Ministers reads as above.

5. No act has been committed by this Ministry to violate petitioner's constitutional and legal rights conferred by the Constitution and law. Situation does not exist to deprive any citizen of the right to citizenship guaranteed by statute and prevailing law. The Ministry of Home Affairs is conducting its functions and actions by adopting the process as per law while remaining within jurisdiction specified by the Constitution and law. This Ministry has not done any works itself or through the bodies under it to violate the citizen's rights and powers conferred by the Constitution and law. The petitioner does not seem to have been able to reveal the substantial ground and reason, too, in the writ petition regarding what kind of directives and decisions of the Ministry of Home Affairs has refused to provide the opponent with citizenship. The Ministry of Home Affairs has not made any orders, directives and circulations to the bodies under it, contrary to the Constitution of Nepal and prevailing law, not to provide citizenship certificate either. Regarding the law relating to citizenship that has not been made for a long time even after the promulgation of the

Constitution of Nepal, the issue of making law relating to citizenship and what kind of amendment is to be made to the existing law is the issue of the jurisdiction of the legislative; hence, order is not supposed to be issued by the esteemed Court regarding this. The writ petition filed with rough estimation by making this Ministry an opponent should be revoked. Affidavit furnished to this Court on behalf of the Ministry of Home Affairs reads as above.

6. In Sub-article (1) of Article 10 of the Constitution of Nepal, there is a constitutional provision that no Nepali citizen shall be deprived of the right to obtain citizenship. In Sub-article (7) of Article 11, there is a provision that notwithstanding anything contained elsewhere in this Article, in the case of a person born from a woman who is a citizen of Nepal and married to a foreign citizen, the person may acquire the naturalized citizenship of Nepal in accordance with the Federal law if he or she has permanently resided in Nepal and has not acquired the citizenship of the foreign country. In Sub-section (2) of Section 5 of Citizenship Act, 2063, there is a provision that in the case of the child born in Nepal from a woman who is a Nepali citizen and married to a foreign citizen, he or she may be provided with naturalized citizenship as prescribed if he or she has permanently resided in Nepal and has not obtained the citizenship of the foreign country on the basis of the citizenship of the father. It is just a provision to provide naturalized citizenship as per directed rule and process of law by remaining under the stated constitutional and legal provision. So far as the petition pleading that mandamus order should be issued to immediately make law and rule relating to citizenship is concerned, the prevailing law relating to citizenship has not contradicted to the Constitution and the state shall make new law relating to citizenship as per necessary; hence, order is not supposed to be issued as per the petition claim; the writ petition should be revoked. Affidavit furnished to this Court on behalf of the Ministry of Law, Justice and Parliamentary Affairs reads as above.
7. In the context that the petitioner has not obtained citizenship, it is not seen justified to make this Secretariat, which extends administrative assistance in the managerial work of Federal Parliament, an opponent on the issue that law has not been made. Particularly, regarding the pleading of the writ petitioner that act, law shall have to be immediately made because law and rule relating to citizenship has

not made yet, this Secretariat seems to have been made an opponent; hence, in the situation that Nepal Citizenship Act, 2063 and Nepal Citizenship Rule, 2063, too, is valid regarding this, there is not the condition to say the legal hurdles have occurred because act, law has not been made. So far as the context to make new law is concerned, when the Government of Nepal submits the Bill to the Federal Parliament by realizing necessity regarding this, administrative support to be extended shall have to be extended on behalf of this Secretariat in the work of passing the Bill from the Federal Parliament as per rule and process; hence, the present writ petition filed by making this Secretariat an opponent should be revoked. Affidavit furnished on behalf of the Secretariat of Legislative-Parliament reads as above.

8. As per Bank and Financial Institution Act, 2073, directives made by Nepal Rastra Bank for the sake of operating banks, opening up account, flowing loan, there is no provision to allow any adult citizen to open up account in the bank without citizenship; hence, the Bank could not open up deposit account on the name of opponent petitioner. Stating about the documents to be received while identifying customer and justifying it in personal account, in Schedule 19.1 of Directive No. 19 of the directive, regarding opening up account, issued by Nepal Rastra Bank, replica copy of one of the citizenship, passport, voter's identity card or driving license is supposed to be submitted. The petitioner does not seem to have mentioned anywhere that he has submitted any stated documents; hence, because necessary documents have not been submitted, his account has not been opened. For the sake of abiding by the provision of Schedule 19.1 of Directive No. 19 of the directives issued by Nepal Rastra Bank, the work of not opening up account by this Bank's Branch Office, Jaleshwar cannot be said otherwise; and since prevailing law has been abided by, the allegation put by the opponent is baseless and false; hence, stated petition should be revoked. Affidavit furnished to this Court on behalf of Ram Bahadur Sah, the Branch Manager of Rastriya Banijya Bank, Jaleshwar Branch reads as above.

Order section

9. In the present petition that has been submitted to the Bench for the sake of decision upon being inducted in weekly and daily cause list of today as per rule, learned senior advocate, Mr.

Surendra Kumar Mahato, present on behalf of writ petitioner and learned advocate Mr. Sunil Kumar Patel pleaded, stating that there is a situation that the mother of the writ petitioner had obtained Nepali citizenship certificate by descent; whereas, the petitioner's father had not obtained the citizenship of any country; birth registration certificate that the writ petitioner was born in Nepal had been attached to the document file; the petitioner had been residing as well as studying in Nepal; in this condition, instead of obtaining citizenship of Nepal by him from mother's name as per the Constitution of Nepal and Citizenship Act, from the opponent's work of dilly dallying in providing with citizenship by showing legal hurdles regarding Citizenship Act, Rule, obstruction occurred in the petitioner's work of studying and opening up bank account; hence, order including mandamus order, whichever is needed, should be issued on the name of the opponents including District Administration Office to provide or get the citizenship provided.

10. Pleading has also been heard, which was made by learned advocate Ms. Sapana Shahi, present on behalf of the opponent, Rastriya Banijya Bank, stating that instead of submitting replica copy of one of the citizenship, passport, voter's identity card or driving license to open up account by any adult citizen as per Bank and Financial Institution Act, 2073 and Directives of Nepal Rastra Bank, the petitioner could not submit any documents mentioned; hence, his account was not opened. The work of Jaleshwar Branch Office of this Bank of not opening up petitioner's account as a result of abiding by the law and directives issued by Nepal Rastra Bank could not be said otherwise; hence, the writ petition should be quashed.
11. Pleading has also been heard which was made by learned deputy attorney of Office of Attorney General, Mr. Gopal Lamichhane, present on behalf of the opponent, the Government of Nepal, Ministry of Home Affairs, stating that nobody could obtain Nepali citizenship without having basis and qualification prescribed by law. After the promulgation of the Constitution of Nepal, there was a condition that making law relating to citizenship had not got completion; the issue of making law relating to citizenship and what kind of amendment was to be made upon the existing law was the issue of the jurisdiction of the legislative; hence, order could not be made from the writ jurisdiction upon the issue under discussion in the Parliament.

The writ petition filed with baseless and unfair claim should be revoked.

12. In this, present writ petition seems to have been furnished, stating that the petitioner's mother, Mithila Kumari, is a citizen of Nepal by descent, and the petitioner's father, Arun Sah, has not obtained the citizenship of any country; they have been residing in Nepal for a long time; the petitioner was born in Nepal and when the petitioner went to Mahottari district, Matihani Municipality, Ward No. 8 to obtain recommendation for the sake of acquiring citizenship by mother's name, the stated Office refused to provide recommendation by showing the lack of law, and even upon providing District Administration Office, Mahottari with information, no hearing was held; hence, since the petitioner's citizenship could not be made, his fundamental rights have been affected due to not being allowed to do works including obtaining education and opening up bank account; hence, appropriate order including mandamus should be issued on the names of the opponents to provide the petitioner with Nepali citizenship certificate by his mother's name, not to deprive or get him deprived of getting education and opening up bank account, as well as quickly finalize the act relating to citizenship.
13. After hearing facts as above and including the pleadings of legal professionals on behalf of both the parties, while seeing upon studying the document file, it seems that decision is supposed to be given regarding whether the order can or cannot be issued as per petitioner's claim in the present case.
14. While considering towards the decision, in this, it seems, from the replica copy of the citizenship attached to the document file, that the petitioner's mother, Mithila Kumari Sah, has obtained Nepali citizenship certificate of No. 61553672 by descent from District Administration Office, Mahottari on date 2049/4/6 (July 21, 1992 A.D.), whereas, it seems to have been mentioned in his birth registration certificate issued on date 2063/11/11 (February 23, 2007 A.D.) in R. No. 751 of Mahottari district, Matihani V.D.C., stating that the petitioner was born in Mahottari district, Matihani V.D.C., Ward No. 8. Even the matter that the petitioner's father, Arun Shah, has not had citizenship has been noted in the stated certificate. Moreover, the document with the description revealing that this petitioner has studied in Sriram

Secondary School, Mahottari also seems to have been included in the document file.

15. In this situation, while looking into the affidavits of the opponents, the Ministry of Home Affairs seems to have been responded with the affidavit, stating that the Ministry of Home Affairs has not given orders, directives and circulations to the bodies under it not to provide citizenship certificate, contrary to the Constitution of Nepal and prevailing law, that the issue of making law relating to citizenship and what kind of amendment is supposed to be made upon the existing law is the issue of the jurisdiction of the Legislative; this Ministry is not supposed to be made an opponent; writ petition should be revoked; whereas, the opponent, Rastriya Banijya Bank, Jaleswor Branch, Mahottari seems to have responded with affidavit to together with the description that as per Bank and Financial Institution Act, 2073 and the Directives made by Nepal Rastra Bank, a provision has been made to submit replica copy of one of the citizenship, passport, voter's identity card or driving license to open up account by any adult citizen, and this petitioner has not submitted any document mentioned; hence, bank account has not been opened up; the functions and actions happened in course of abiding by the prevailing law cannot be said otherwise; hence, the writ petition should be revoked. Moreover, other opponent offices also seem to have submitted affidavits with the description that they have not done any act to affect in the petitioner's fundamental or other legal rights and powers; hence, the writ is not supposed to be issued. However, while looking into the description of petition and opponents' affidavits, too, condition seems that the writ petitioner, Arjun Kumar Sah has not obtained Nepali citizenship certificate.
16. Now, while considering regarding whether this petitioner can obtain citizenship of Nepal or not as per the Constitution of Nepal, the matter that the writ petitioner, Arjun Kumar Shah is a son of mother, Mithila Kumari and father, Arun Shah, is seen from the replica copy of his birth registration certificate submitted by the petitioner along with the petition. Dispute is not seen in Nepali citizenship certificate that the petitioner's mother, Mithila Kumari, has obtained by descent. The petitioner seems to have studied in Nepal as well, after being born in Nepal, and he is found to have mentioned in the petition that his father has not had citizenship

of any country yet and he has not obtained citizenship of any country by father's name. Petition claim seems to have been laid, stating that the petitioner should obtain citizenship in this situation, as per Article 11 (7) of the Constitution of Nepal.

17. Regarding obtaining citizenship, provision seems to have been made in Article 8 (7) of the Interim Constitution of Nepal, stating, "Notwithstanding anything contained elsewhere in this Article, in the case of a person born from a woman who is a citizen of Nepal and married to a foreign citizen, the person may acquire the naturalized citizenship of Nepal in accordance with prevailing law if he or she has permanently resided in Nepal and has not acquired the citizenship of a foreign country on the ground of father's citizenship," whereas, the same provision seems to have been made in Sub-article (7) of Article 11 of the present Constitution of Nepal, stating, "Notwithstanding anything contained elsewhere in this Article, in the case of a person born from a woman who is a citizen of Nepal and married to a foreign citizen, the person may acquire the naturalized citizenship of Nepal in accordance with the Federal law if he or she has permanently resided in Nepal and has not acquired the citizenship of a foreign country." Moreover, in Sub-section (2) of Section 5 of Nepal Citizenship Act, 2063 that has been made to implement constitutional provision relating to citizenship, there is a provision, stating, "In the case of the child born in Nepal from a woman who is a Nepali citizen and married to a foreign citizen, he or she may be provided with naturalized citizenship as prescribed if he or she has permanently resided in Nepal and has not obtained the citizenship of the foreign country on the basis of the citizenship of the father."
18. From the stated constitutional and legal provisions, it appears that the children born from a Nepali citizen woman who is married to a foreign citizen may be provided with the naturalized citizenship of Nepal if they have permanently resided in Nepal upon being born in Nepal and have not obtained the citizenship of the foreign country based on father's citizenship. In the context of the present writ petition, the petitioner's mother seems to be a Nepali citizen by descent; whereas, the pleading seems to have stated that the petitioner's father has not obtained the citizenship of any country. Moreover, condition does not appear to deprive

this petitioner of citizenship, if qualification and conditions in accordance with the Constitution and the Act relating to citizenship are fulfilled, on the ground of the pleading that the petitioner has been residing in Nepal by studying in Nepal upon being born in Nepal, and that the petitioner has not obtained citizenship on the ground of father's citizenship. Moreover, as the condition is not seen to have been mentioned in their affidavits and in course of pleadings by the opponents that there is condition that the petitioner cannot obtain citizenship, the petitioner seems to be able to citizenship as per Sub-article (7) of Article 11 of the Constitution of Nepal and Section 5 (2) of Nepal Citizenship Act, 2063. Moreover, from including the condition that mandamus order has been issued on the name of District Administration Office to provide citizenship by mother's name, with the precedent propounded by this Court, in the writ petition of mandamus having Sabina Damai vs. the Government of Nepal (N.L.M. 2068, D.No. 8557, Number 2, P. 247), and in the disputes of such kinds, stating that even if any one of the father or the mother of any person is a citizen of Nepal, such person may obtain the citizenship of Nepal, it seems that the petitioner can obtain citizenship by mother's name in the present case as well.

19. Thus, on the ground of the documents and evidence submitted by the petitioner, it seems that this petitioner is supposed to obtain the citizenship of Nepal as per the Constitution of Nepal and the prevailing law relating to citizenship; hence, the Ward Office concerned shall have to provide recommendation for the sake of acquisition of citizenship by looking into and examining necessary legal processes and documents as well, and District Administration Office shall have to provide Nepali citizenship certificate based on it. In such situation, if the petitioner, Arjun Kumar Sah, comes by fulfilling necessary documents and processes prescribed by law, it shall not be suitable to law to refuse and dilly dally to provide him with citizenship; hence, pleadings of the learned deputy-attorney present on behalf of including the Ministry cannot be agreed with.
20. Hence, from including the aforementioned analyzed ground, reason and legal precedents, in the present petition, it seems that Mithila Kumari, mother of the petitioner, Arjun Kumar Sah, is a Nepali citizen by descent, and that this petitioner has been permanently residing,

studying in Nepal upon being born in Nepal, and from the pleading held stating that he has not obtained citizenship by father's name either, because his father has not had any citizenship of any country either, it seems that he can obtain Nepali citizenship. In such situation, it is decided that mandamus order shall be issued on the name of the opponent district Mahottari, Office of Matihani Municipality, Ward No. 8 to provide recommendation by doing as per law if the petitioner makes demand for recommendation for the sake of citizenship certificate, and on the name of the Government of Nepal, Ministry of Home Affairs and District Administration Office, Mahottari to provide him with citizenship certificate by fulfilling the process as per law on the basis of other necessary documents including the stated recommendation. There shall be no problems

to open up bank account as well as to study when citizenship is obtained; hence, additional analysis does not seem to be made regarding this as per petition pleading. Provide these opponents with information of the present order and submit the document file to the record section by striking off the account of the case-file of the present case.

S/d
Judge

I agree with the said opinion.

S/d

Judge

Bench Officer: Kamal Kanta Joshi

Computer: Manjita Dhungana

Done On: 2075/05/28/05 (Thursday, 13th September, 2018)

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