

Supreme Court, Single Bench
Chief Justice Khil Raj Regmi
Writ No. 068-Wo-1085, 1086, 1087

Subject: **Certiorari & others.**

Petitioner: Advocate Rajkumar Rana et.al

Vs

Respondents: Prime Minister and the Office of the Council of Ministers et.al

Petitioner: Advocate Kanchan Krishna Neupane

Vs

Respondents: Prime Minister and the Office of the Council of Ministers

Petitioner: Bharatmani Jangam et.al

Vs

Respondents: Prime Minister and the Office of the Council of Ministers.

Order

What are the basic contents of the case? Is there any ground for the non-issuance of an order as sought by the petitioner? If there is any reason for not issuing an order as demanded by the petitioners, let the respondents be notified along with a copy of this order and the writ petition requiring them to furnish their written reply through the office of the Attorney General within 15 days excluding the time period likely to be consumed for journey and then present the case as per rules after the written reply is received or expiry of the time period.

In addition to this, while considering also upon the request made in the petition for an interim order, this court, in reference to a writ petition with writ No. 068-ws-0014 filed in regard to extension of term of the Constituent Assembly (CA) by 3 months effecting amendments to the Article 64 through the Tenth Amendment to the Interim Constitution of Nepal, 2063, has, besides other things, issued an order in 2068/8/9 in the name of the Chairman of the Constituent Assembly, Prime Minister and the Council of Ministers to ascertain actual time period really needed for the accomplishment of the task of constitution writing within the stipulated time for the last chance as enshrined in the restrictive Clause of Article 64 of Interim Constitution, 2063 and, if it could not be done or committed as above, to conduct referendum under Article 157 or for the fresh polls of Constituent Assembly under Article 63 or to make provisions in regard to forward other necessary action proceedings as may deem appropriate therefor since the term of Constituent Assembly has to be ipso facto terminated thereafter.

Even though the respondents are found to have extended the term of CA by 6 months from the date of 2068-8-14 by effecting Eleventh Amendment as

directed by the above order, however, the writ petition has had a mention that the respondents, without giving the finality to the task of constitution writing, found to have registered the Amendment Bill in the Legislature Parliament Secretariat by reaching a decision from the Council of Ministers in 2069/2/9 (B.S.) with the objective of extending the term of CA for the next 3 months since there was a possibility also of terminating the time period so extended.

Since a review petition filed by the respondents requesting for the review of the order of this court has been repudiated by this court, which in accordance with Article 116 is the final (fall of the curtain) and therefore has binding effect to all else including the respondents. Likewise, since the respondent are found to have extended the term of CA for 6 months effecting Eleventh Amendment to the Interim Constitution as directed by the said order of this court. So, its first and foremost duty is to complete the task of promulgating the constitution within the said deadline -- that is 2069/2/14.

So was the case, however, no efforts are found made to opt for conducting a fresh poll, the referendum or adopt any other appropriate alternative measures as directed by the said order to resolve the possible deadlock if there was likely to arrive a situation of not completing the task of making the constitution even within the deadline fixed by the order dated 2068/8/9 within which the CA would ipso facto face its demise. Now therefore, the act of proceeding the constitution amendment bill by reaching a decision of extending the CA term for next 3 months as was done previously in course of amending the constitution assuming as if that this court has made no order in this regard hereinbefore is in violation of the order of this court together with the Article 64 and Article 116 of the constitution.

Since the decision made by the respondents Council of Ministers in 2069/2/9 in regard to the extension of the term of CA is found erroneous on the face of it and contradicting to the final order of this court and constitutional provisions mentioned above, now therefore, in view the balance of convenience, this interim order has been issued in the name of respondents Prime Minister and the Council of Ministers as well as the chairman of the CA in accordance with Rule 41 of the Supreme Court Rules, 2049 directing them not to forward the process of Thirteenth Amendment Bill of the Interim Constitution, 2063. Let the respondents be notified about this order through the Office of Attorney General as soon as possible.

Sd.

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(Khil Raj Regmi)

Chief Justice

Done on 11th Jestha, 2069. (24th May 2012)