

**The Supreme Court, Division Bench
Honorable Justice Mr. Anil Kumar Sinha
Honorable Justice Mr. Nahakul Subedi**

Order

078-WO-0853

Issue: Writ of Certiorari

Bindiya Maharjan, daughter of Kishor Maharjan, resident of Siddhipur-4,
currently Mahalaxmi Municipality, Ward No. 6, formerly Siddhipur,
Lalitpur District 1 Applicants

Kristina Maharjan, daughter of Bindiya Maharjan 1

Vs.

Government of Nepal, Ministry of Home Affairs, Singha Durbar,
Kathmandu 1 Respondents

District Administration Office, Manbhawan, Lalitpur 1

Office of Ward No. 6, Mahalaxmi Municipality, Siddhipur, Lalitpur.....1

Summary of the Petition

The brief facts and the decision of the writ petition submitted before the jurisdiction of this court pursuant to Article 46 and Article 133(2) of the Constitution of Nepal are as follows:

1. The right to citizenship constitutes an individual's most paramount right. Citizenship is the document that establishes a person's identity and simultaneously constitutes the individual's right to nationality. Citizenship forms the very basis upon which a person may claim the rights and privileges conferred by the State. Without citizenship, an individual lacks both an official identity and the ability to access rights granted by the State. From among the petitioner, I, Bindiya Maharjan, have been deprived of the right to confer Nepali citizenship upon my child, and I, Kristina Maharjan, have been deprived of the right to acquire Nepali citizenship in the name of my mother. Our permanent residence is at Ward No. 6, Mahalaxmi Municipality, Lalitpur District. Among the petitioners, I, Bindiya Maharjan, became a mother prior to entering into a marital relationship. When I informed my partner about my pregnancy, he forcibly took me to his residence in Maharajgunj, Kathmandu, insisting that we must marry. When I was in my trimester, he physically assaulted me during an altercation, threatened my life, locked me in a room, poured kerosene inside, and left after attempting to set it on fire. By fortune, I survived and have since been living under the protection of my father and mother. During this period, on 2060/06/21 (corresponding to 8 October 2003), from among the petitioner, Kristina, was born at Teaching Hospital. The responsibility for her upbringing, education, and care rested solely upon her mother, who was a single mother at the time. Consequently, the petitioner's mother left her daughter under the protection and care of her

father and mother and proceeded to Israel for employment, where she remained for eleven years before returning. Upon her return, the petitioner's mother, Bindiya Maharjan, entered into a marital relationship with Krishna Shrestha, residing in Ward No. 5, Buddhashanti Rural Municipality, Jhapa District. While the petitioner, Kristina, was enrolled in Grade 8, the school required her official birth registration. Although the hospital-issued birth certificate was initially submitted, the school insisted on the formal birth registration. Accordingly, on the basis of the hospital certificate, the Division Ward Office of Mahalaxmi Municipality, Siddhipur, issued a certified recommendation for birth registration, which enabled the petitioner to continue her education without interruption. At present, having attained the age of eighteen years, when I, the petitioner Kristina, approached the Ward Office to obtain a recommendation for citizenship, I was informed that my birth could not be registered on the basis of my maternal home, where we have been residing. Consequently, my request to have my birth registered and to obtain a recommendation for citizenship was denied. Thereafter, when I again approached the same Ward Office to apply for citizenship in the name of my mother using the prescribed schedule form, the Ward Chairperson instructed me to include the name of my father in the form. I, the petitioner Kristina Maharjan, informed the Ward Office that I do not wish to include my father's name in the prescribed schedule form. In response, I was told that since my paternal home is in Makwanpur District, it is not possible to obtain a recommendation for citizenship from this Ward Office, and my request was refused. A photocopy of the certified birth recommendation submitted by me was annotated by the Ward Secretary on 2078/09/01 (corresponding to 16 December, 2021) as follows: *"It is noted that Kristina Maharjan, daughter of Bindiya Maharjan, residing in Ward No. 6, Mahalaxmi Municipality, has no known contact with her father, Lokesh Subedi Chhetri. Since the address of Lokesh Subedi Chhetri is recorded in Ward No. 4, Manhari, Makwanpur District, it is not permissible to register the birth from this Ward."* I, petitioner Kristina Maharjan, am the daughter of Bindiya Maharjan, born and continuously residing in Nepal. Despite my clear intention to establish my identity through my mother's name, I am being compelled to record the name of a father whom I have never known. The Ward Office insisted that unless my father's name is included, it cannot verify whether he is a Nepali citizen. To allay this concern, I submitted a copy of my father's Nepali citizenship certificate showing his address in Makwanpur; however, the office orally refused to provide a recommendation for citizenship on the basis that there is no law permitting issuance of citizenship using the mother's name and address alone. As a result, I, Bindiya Maharjan, have been deprived of the right to confer my identity upon my child, and I, Kristina Maharjan, have been forced to live in a stateless condition. Therefore, we request the following orders be issued against the respondents:

- (a) The order dated 2078/09/01 (corresponding to 16 December, 2021) issued by the Ward Office, Mahalaxmi Municipality, Ward No. 6, annotated on the photocopy of the petitioner Kristina Maharjan's certified birth recommendation, be quashed through an order of certiorari.
- (b) An order in mandamus be issued against the respondents, Mahalaxmi Municipality, Ward No. 6, directing them to register the birth of the petitioner, Kristina Maharjan, on the basis that her mother, Bindiya Maharjan, is the reporting parent and that the father's whereabouts are unknown.

- (c) An order in mandamus be issued against the respondents, District Administration Office, Lalitpur, directing them to provide a recommendation for citizenship based on the mother's name, Bindiya Maharjan, and, on the basis of such recommendation, to issue a Nepali citizenship certificate to the petitioner.
- (d) In view of the extremely sensitive nature of the matter and the need for an expeditious decision, this court is requested to accord priority to the hearing of the present writ petition and to dispose of it at the earliest possible date.
2. A show-cause notice on 2078/11/4 (corresponding to 16 February, 2022) had been issued by this court which states as follows: what has transpired in this matter? Provided, there exists any reasons or ground as to why the order sought by the petitioners should not be issued, the respondents No. 1 and 2 are hereby directed to submit a rejoinder within 15 days from the date of receipt of this order, excluding the period of travel through the Office of the Attorney General and respondent No. 3 to submit a rejoinder through a representative. It is hereby ordered to provide a copy of this order and the petition and to issue summon in the names of the respondents with the case file to be submitted upon receipt of the rejoinder or upon the expiry of the prescribed limitation period. Considering the seriousness of the matter and the necessity for an expeditious hearing, priority has been to the case in accordance with Rule 73 (1) of *Supreme Court Regulations, 2074*.
3. The rejoinder submitted by the Ministry of Home states as follows: Rule 3 of the *Nepal Citizenship Regulations, 2063*, prescribes the procedure for acquiring Nepali citizenship on the basis of descent. An application must be submitted to the Chief District Officer along with the documents specified for obtaining a citizenship certificate by descent. It is therefore the responsibility of the person seeking citizenship to compile and submit the required documents in accordance with the prevailing Regulations. Since a Nepali citizen who has complied with the procedures prescribed by the applicable Act and Regulations is entitled to obtain a Nepali citizenship certificate from the competent authority, there exists no legal basis or justification for naming this Ministry as a respondent. Accordingly, the present writ petition, insofar as it seeks to make the Ministry a party, is liable to be dismissed.
4. The rejoinder submitted by the District Administration Office is as follows: To obtain Nepali citizenship, the writ petitioner is required to submit a recommendation from the local authority on the Schedule-1 form prescribed under the *Nepal Citizenship Regulations, 2063*, along with supporting documents establishing descent from the father or grandfather, including birth registration. It is a legal obligation of the petitioner herself to compile and submit the requisite documents. However, the writ petitioner has not yet submitted the Schedule-1 form or the documents mandated by law in accordance with the prescribed procedure. Under the prevailing Acts, Rules, and Regulations of Nepal, once the statutory conditions and procedures are duly fulfilled and the evidence establishing descent is provided, the competent authority is legally bound to take action to grant citizenship. In the absence of such compliance, the present writ petition is liable to be dismissed.

5. From the perusal of the case file, it is evident that rejoinder on behalf of the Office of Ward No. 6, Mahalaxmi Municipality, Siddhipur, Lalitpur has not been submitted.

Order

In the present writ petition, filed before this Bench, Senior Advocate Ms. Mira Dhungana, along with learned counsels Ms. Vinu Lama, Ms. Roshna Pradhan, Ms. Pushpa Paudel, and Mr. Naveen Kumar Shrestha, appeared on behalf of the petitioner and submitted that the petitioner, Kristina Maharjan, is the daughter of Ms. Bindiya Maharjan. It is stated that Ms. Bindiya Maharjan conceived while in a consensual romantic relationship, prior to the solemnization of any marital union. During this period, an attempt was made on her life by setting fire to the room in which she was confined with kerosene; by fortuitous circumstances, she survived. It is further submitted that the petitioner, Kristina Maharjan, born from this relationship, is entitled under law to acquire Nepali citizenship through her mother, without reference to the name or identity of the father. Since the mother of Kristina is a Nepali citizen and the petitioner was born in Nepal and has been residing permanently in Nepal, Kristina is constitutionally entitled to acquire citizenship by descent. The refusal of the concerned local authority, where the petitioners reside, to accept the duly completed Schedule form submitted by the petitioners, and the failure of the respondent municipality to register the birth, constitute administrative irregularities. The petitioners cannot be compelled to include the name of Lokesh Subedi, particularly where there is no legal requirement to do so, and any attempt to do so would amount to an infringement on their existence and fundamental rights. It is submitted that the petitioner, Kristina Maharjan, has never had any contact with Lokesh Subedi. Having been entirely neglected and unacknowledged by him or his family since her birth, the petitioner does not wish to include the name of Lokesh Subedi as her father in the Schedule form. The act of compelling the petitioner to record Lokesh Subedi as the father, as attempted by the order dated 2078/09/01 (corresponding to 16 December, 2021) issued by Ward No. 6, Mahalaxmi Municipality, is manifestly contrary to the petitioner's expressed will and constitutes a procedural and administrative irregularity. Consequently, it is contended that the said order be quashed by way of certiorari, the petitioner's birth be duly registered, the Schedule form certified, and a writ of mandamus be issued against the respondents, directing them to issue a Nepali citizenship certificate in the name of the petitioner, Kristina Maharjan, reflecting exclusively the name of her mother.

On behalf of the respondents, learned Deputy Attorney General, Mr. Pushpraj Bastola, submitted that the petitioner has acknowledged an individual as her father, whose address is duly recorded in Makwanpur District, and therefore, the petitioner is competent to obtain a birth registration certificate from the appropriate local authority of that jurisdiction. It was contended that the petitioner's deliberate omission to include the father's name in the Schedule form may give rise to legal complications and procedural difficulties. It was further submitted that the Constitution permits a child to acquire citizenship through a Nepali mother only where the father's identity is genuinely unknown. In the present case, however, the petitioner has produced documentary evidence establishing the father's identity, including a copy of his citizenship certificate, and upon verification, the competent local authority is capable of issuing the requisite recommendation for citizenship. In light of the foregoing, it was argued that the present writ petition is liable to be dismissed.

Upon examination of the present petition, it is observed that the petitioner, Bindiya Maharjan, while in a consensual romantic relationship with Lokesh Subedi, informed him of her pregnancy. Subsequently, she was confined in a room in Maharajgunj, physically assaulted, and subjected to an attempt to set the room on fire with kerosene; by fortuitous circumstances, with the assistance of her landlady, she survived. After the birth of her daughter, Kristina, the petitioner entrusted her care to her parents. Despite subsequently entering into a marital relationship upon return from foreign employment, the petitioner has been unable to secure citizenship for her daughter through the father, who has not assumed any parental responsibility and whom the daughter has never met. The petitioner submits that her daughter, Kristina Maharjan, is entitled to obtain a Nepali citizenship certificate reflecting only the maternal lineage and domicile at Mahalaxmi Municipality, Ward No. 6, and that no person who has not been involved in her care or upbringing should be recorded as the father. Further, when the petitioner approached the relevant municipal office for issuance of the birth registration certificate, she was erroneously directed to obtain the same from Manhari, Makwanpur District, which constitutes a procedural irregularity. As the issuance of a birth registration certificate is a prerequisite for acquisition of citizenship, the primary relief sought in this petition is the issuance of a writ of mandamus directing the competent authority to issue a Nepali citizenship certificate in the name of the petitioner reflecting exclusively the name of her mother. The failure of the Ward No. 6, Mahalaxmi Municipality, office to comply with this court's show-cause order and submit a rejoinder indicates a lack of due regard for the matter by the elected administrative body. It is further noted that the other respondents have submitted that, where the father's identity is known and the procedures prescribed under the Constitution, relevant Acts, and Rules have been duly complied with, the petitioner is entitled to acquire citizenship. On the basis of these considerations, the respondents' argued for dismissal of the petition.

The question for determination before this Court is whether the order issued by Ward No. 6, Mahalaxmi Municipality, directing the petitioner, Kristina Maharjan, born out of wedlock to a mother who was pregnant prior to marriage, to obtain her birth registration certificate from Manhari Rural Municipality, Makwanpur District, in the name of her biological father, Lokesh Subedi, whose identity is fully disclosed, is legally tenable. It is further to be determined whether the petitioner, Kristina Maharjan, is entitled to acquire a Nepali citizenship certificate solely in the name of her mother, without reference to the father's identity. After considering the facts, circumstances, and relevant legal provisions, this court is called upon to decide whether an order in accordance with the petitioner's request should be issued against the respondents.

2. In considering the petitioners' claim to acquire citizenship in the name of their mother, it is pertinent to examine the constitutional framework governing such entitlement. For this purpose, not only the provisions of the current Constitution of Nepal but also the relevant provisions of the Interim Constitution of Nepal, 2063, are instructive. The following provisions of the said Constitution delineate the qualifications for Nepali citizenship and the circumstances under which a person may be issued a citizenship certificate:

Article 8: Citizenship at the time of commencement of the Constitution:

- (1) The persons who have obtained the citizenship of Nepal at the time of commencement of this Constitution and who are qualified to obtain citizenship in accordance with this Part shall be the 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) 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.
- (4) Whenever any territory is acquired by way of merger into Nepal, person having his or her domicile in such territory shall become a citizen of Nepal.
- (5) Any person who was born within the territory of Nepal and has been residing permanently in Nepal up to the end of Chaitra, 2046 B.S., shall be entitled to acquire Nepali citizenship on the basis of birth, in accordance with the prevailing law.

Provided, however, that in order to avail of this entitlement, an application must have been submitted within the prescribed time limit as set forth in the prevailing law, and such application shall be entertained only once.

3. With regards to citizenship, the Constitution of Nepal prescribes the following:

Article 10 (1): No citizen of Nepal may be deprived of the right to obtain citizenship.

Article 11 (2): The following person who has his or her permanent domicile in Nepal at the time of commencement of this Constitution shall be citizen of Nepal by descent.

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

Article 11 (5): 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.

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.

4. Thus, the Constitution of Nepal unequivocally guarantees to every citizen the right to acquire citizenship. From the aforesaid constitutional provisions, it is manifest that the framers have expressly committed that no individual, once qualified as a “**Nepali citizen**,” shall be deprived of the correlative right to citizenship. It is further discernible that the terms “**citizen**” and “**citizenship**” have been employed with distinct legal import. Accordingly, upon the fulfillment of the constitutional and statutory criteria for Nepali citizenship, such person must be deemed and recognized as a Nepali citizen. To withhold such recognition merely on the ground that a formal certificate of Nepali citizenship has not yet been issued in his or her name is inconsistent with, and repugnant to, the spirit, purpose, and mandate of the Constitution.

5. There can be no dispute that the issuance of a certificate of citizenship is a matter of utmost sensitivity and procedural significance. However, the characterization of citizenship as a sensitive subject cannot serve as a pretext to keep a person otherwise qualified for Nepali citizenship in a state of uncertainty, nor can it justify undue delay in the issuance of the citizenship certificate on any pretense whatsoever. In this regard, the primary responsibility lies with the local government and the local administration, while the Government of Nepal, through the Ministry of Home Affairs, bears the duty to ensure that a conducive and enabling environment is created so that qualified individuals may obtain citizenship through procedures that are as simple and accessible as possible. The distortions occasionally observed in the administration of citizenship distribution cannot be permitted to result in qualified Nepali citizens facing unnecessary hardship in obtaining a citizenship certificate. To remedy such irregularities, good governance is expected from the competent authorities. Section 8 of the *Good Governance (Management and Operation) Act, 2064*, imposes a duty upon **“concerned public officials to uphold good governance”**, while Section 13, clause (f) thereof obliges them to **“render services delivered from their respective offices effective for the general public”**. From these statutory mandates, it is evident that the heads of the concerned offices bear significant legal as well as moral responsibility to ensure that the objectives envisioned by the Constitution are implemented in an effective and result-oriented manner.
6. The dimension of national identity conferred through citizenship is of unparalleled significance in human life. The enjoyment of rights such as the right to education, the right to health, the right to engage in profession, business, or employment, and the right to equality, among others, becomes substantially hindered in the absence of a certificate of citizenship. Under *Chapter 1, Part 2, of the National Civil Code, 2074*, concerning **natural persons**, Section 30 stipulates that *“every person shall be recognized as a person from the moment of birth and shall, for the duration of his or her natural life, be entitled to exercise rights in accordance with law”*. Upon consideration of the statutory framework concerning the recognition and authentication of birth, it is observed that Section 6 of the *Birth, Death, and Other Personal Events (Registration) Act, 2033*, provides that birth shall be legally recognized on the basis of the birth registration certificate issued by the local Registrar. Likewise, Section 4 (1) of the *Children’s Act, 2075* guarantees that **“every child shall have the right to a name and birth registration along with his or her identity,”** and Sub-section (7) of the same provision stipulates that **“a child whose paternity is not established shall be entitled to use the mother’s surname.”** From these provisions, it becomes evident that birth constitutes the foundational basis for nationality and familial identity, and that a birth registration certificate is a necessary and indispensable legal instrument for the exercise of fundamental human rights. Although a birth certificate is issued on the basis of information provided by a designated informant, it cannot, save in exceptional circumstances, serve as the sole instrument to establish paternity or disclose the identity of the father. Nonetheless, the acquisition of a birth certificate creates the legal entitlement of the individual to avail himself or herself of rights and facilities guaranteed by law, and signifies the formal commencement or establishment of a legal relationship with the State. Furthermore, apart from recording the particulars of the informant, a birth certificate formally authenticates, unless proven otherwise, the essential details of the individual’s birth, including the date and place of birth, which must be deemed to have received official recognition by the State.

7. It is well established under international human rights law that every individual is entitled to legal recognition of his or her identity. Article 6¹ of the Universal Declaration of Human Rights (UDHR), 1948, and Article 16² of the International Covenant on Civil and Political Rights (ICCPR), 1966, expressly provide that every person shall be recognized as a person before the law. Further, Article 15 of the UDHR guarantees the right of every individual to a nationality and expressly prohibits arbitrary deprivation of one's nationality³. Article 24 of the *International Covenant on Civil and Political Rights (ICCPR)*, 1966, recognizes the right of every child to acquire a nationality⁴. In its General Comment No. 17⁵, it further clarifies that **"Every child has the right to be registered immediately after birth and to have a name. In the Committee's opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child's legal personality."** These provisions affirm that, at the international level, the right to nationality is intrinsically connected to the legal recognition of a person's identity. Similarly, Articles 7 and 8 of the *Convention on the Rights of the Child (CRC)*, 1989, unequivocally guarantee every child the right to acquire a nationality⁶.
8. It cannot be denied that an individual's identity, in certain circumstances, may also be a matter of personal choice. Sub-section (2) of Article 11 of the *Constitution of Nepal*, by referring to **"father or mother,"** contemplates the provision of citizenship through the mother's identity as equally valid from a gender perspective. This legislative intent is further reinforced by Article 9 of the CEDAW, which recognizes the right of both fathers and mothers to confer their nationality upon their children⁷. In matters as significant as citizenship, the question of whether

¹ Universal Declaration of Human Rights(UDHR) ,

Article 6: "Everyone has the right to recognition everywhere as a person before the law."

² International Covenant on Civil and Political Rights(ICCPR),

Article 16: Everyone shall have the right to recognition everywhere as a person before the law."

³ Universal Declaration of Human Rights (UDHR) ,

Article 15(1): " Everyone has right to nationality. "(2)"No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

⁴ International Covenant on Civil and Political Rights (ICCPR),

Article 24(2): Every child shall be registered immediately after birth and shall have a name. (3). Every child has the right to acquire a nationality.

⁵ HRI/GEN/Rev.9 (Vol I)

⁶ Declaration of the Rights of the Child)Proclaimed by the General Assembly Resolution 1386 (XIV) of 20 November 1959)Principle no 3:"The child shall be entitled from his birth to a name and nationality."

Convention on the Rights of the Child(Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989, entry into force: 2 September 1990),

Article 7(1):"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/her parents." (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 would otherwise be stateless.

Article 8(1): State parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. (2)Where a child is illegally deprived of some or all of his/her identity, State parties shall provide appropriate assistance and protection with a view to re-establishing speedily his/her identity.

⁷ Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),

Article 9(2): "State Parties shall grant women equal rights with men with respect to the nationality of their children.

the father's identity must mandatorily be disclosed for the purpose of acquiring citizenship has been considered in *ABC vs. State (NCT of Delhi)*⁸. It was observed that where the father had entered into another marriage and had shown no concern for the child, leaving the mother solely responsible for the child's upbringing, the child is entitled to acquire citizenship through the mother. The Court held that there is no mandatory requirement to disclose the father's identity in such circumstances, noting that: ***"The welfare of the child would be undermined if the appellant is compelled to disclose the identity of the father, or the court notice is mandatory in the child's interest."*** This principle demonstrates that such circumstances are recognized not only in Nepal but also in other jurisdictions.

9. With regard to the issuance of citizenship in the name of the mother, a review of this Court's judicial practice, including the writ petition of Bipana Basnet versus the Office of the Prime Minister and Council of Ministers⁹, indicates that ***"the Constitution, laws, and judicial precedents of Nepal provide for the acquisition of citizenship through either the father's or mother's name. Since both parents constitute an equal genealogical basis for the child, the mere desire to include the father's name cannot operate as a ground to prevent the use of the mother's identity or surname. Prohibiting the recording of the mother's surname on the pretext that only the father's surname must be recorded constitutes differential treatment in respect of parental surnames. Such an interpretation would not only violate the petitioner's right to choose the genealogical surname but also infringe upon the principle of equality between men and women."*** In the writ petition of Lakshmi Kumari Sharma versus the District Administration Office, Kathmandu, it has been observed that ***"citizenship is an extremely sensitive matter intrinsically linked to an individual's personal identity. In the absence of citizenship, access to education, employment, foreign travel, and other essential activities is effectively obstructed. In circumstances where it is fundamentally established that an individual is a citizen, imposing even minor procedural obstacles that create difficulties for the citizen or exploit their vulnerability is not just or permissible."*** This interpretation is also pertinent to the present matter.
10. From the aforesaid constitutional and legal provisions, it is evident that in Nepal, any person born to either a father or a mother who is a citizen of Nepal and who is permanently residing in Nepal shall acquire Nepali citizenship by descent. Likewise, it is also found that a person born in Nepal to a Nepali mother, who resides in Nepal, and whose father's identity is not established, shall also be entitled to acquire Nepali citizenship by descent. Constitutionally, a person may obtain a certificate of citizenship primarily on the basis of descent, naturalization, or birth. In her petition, the petitioner, Ms. Kristina Maharjan, has set forth in detail the obstacles she encountered in her attempt to obtain citizenship in the name of her mother. Her mother, Ms. Bindiya Maharjan, had become pregnant prior to entering into a lawful marriage with the man of her choice; however, as that man absconded irresponsibly without contracting marriage, Ms. Bindiya became a mother while still unmarried. The adverse legal, practical, and social circumstances that Ms. Bindiya and the child born to her were compelled to endure over a

⁸ Supreme Court of India, 6 July 2015, accessed on Indian Kanoon

⁹ Nepal Law Magazine 2075, Decision No. 100066

prolonged period of time cannot be easily assessed in ordinary terms. It is pertinent to note the observations made by this Court in *Punyawati Pathak vs. Ministry of Foreign Affairs et.al.*,¹⁰, wherein it was held that ***“any executive decision which imposes greater hardship upon women than upon men, regardless of how bona fide the intention may be, must be regarded as discriminatory, an excess of power, and arbitrary, being contrary to the accepted principles of the rule of law... the executive cannot, without statutory authority, render decisions that deprive women alone of the enjoyment of such freedoms.”*** Likewise, in the case of *Nakkali Maharjan vs. Office of the Prime Minister and Council of Ministers et.al.*,¹¹, it was expressed that ***“an act of withholding recommendation for citizenship on the ground of sex or marital status, thereby discriminating against the petitioner and depriving her from obtaining a certificate of citizenship, cannot be deemed lawful.”*** In the present context, reference to these principles appears relevant.

11. Now, with regard to the acquisition of citizenship in the name of the mother, this Court finds that once a person has obtained a citizenship certificate on the basis of self-declaration under descent through the mother, and it is subsequently established that the person’s father is a foreign national, the nature of such citizenship shall stand altered and deemed to have converted into naturalized citizenship, in accordance with the proviso Clause contained in *Article 11 (5) of the Constitution of Nepal*. It must therefore be held that the declaration made by an individual, asserting the identity of himself or of his father or mother, bears a substantive and determinative nexus with the matter of acquisition of citizenship. In reference to the expression “father’s identity” as mentioned in Sub-article (5) of the said Article, the question naturally arises as to who is to determine such identity. For a child, the father’s identity is linked to factors such as his physical presence, the affection and care extended by him, and the responsibility undertaken by the person claimed to be the biological father. If the proof of identity provided by, or available in relation to, the person asserted to be the father is acknowledged by the child upon attaining majority, or is capable of being so acknowledged, then such a person shall, unless otherwise disproved, be deemed to be the father—this being a matter of legitimate legal expectation. Where the mother or other members of the family have disclosed the name and lineage of a person as the biological father, but the child has remained unaware of such identity, and upon attaining majority is not in a position to objectively verify those details, it cannot be deemed just and reasonable to compel such child, or such person upon becoming an adult, to accept as father one with whom there has never been any physical or emotional contact or relationship merely on the basis of such disclosure. Should the State apparatus insist otherwise, it would amount to an act of injustice towards such children. In such circumstances, it is appropriate to determine the existence or non-existence of the father’s “identity” on the basis of the declaration made by the concerned individual applying for citizenship. Where an application for a citizenship certificate is submitted on the strength of the details disclosed and declaration made by such individual, it is the duty of the competent authority, in consonance with the spirit, intent, and objectives of the Constitution and the law, to render a decision expeditiously and to provide the citizenship certificate with ease and simplicity, thereby

¹⁰ Nepal Law Magazine 2062, No. 8, Decision No. 7585

¹¹ Nepal Law Magazine 2065, No. 11, Decision No. 8035

formally establishing that individual's relationship and identity with the State. Should the facts so declared later be proven false, the responsibility and consequences thereof must rest upon the declarant alone. Hence, it is neither just nor appropriate for the concerned authority to cause any delay in matters relating to birth registration and citizenship proceedings.

12. The principal claim of this petition is that citizenship be granted in the name of the mother without requiring the father's name. In this regard, it has already been explicitly interpreted by this court in *Sabina Damai v. Government of Nepal, Office of the Prime Minister and Council of Ministers*, wherein it was held that **"even if either the father or the mother alone is a citizen of Nepal, the concerned person shall be entitled to acquire Nepali citizenship"**¹². Likewise, in *Sajda Sapkota v. Government of Nepal, Office of the Prime Minister and Council of Ministers*, it was observed that **"where persons born in Nepal to a Nepali mother and residing in Nepal are entitled to obtain citizenship in the name of the mother, it cannot be considered lawful to deny them a citizenship certificate by raising the question of whether the father is a foreigner or a Nepali, thereby rendering them stateless, despite their fulfillment of the constitutional and legal qualifications for acquiring citizenship"**¹³. Furthermore, in *Srijana Kharel v. Government of Nepal, Office of the Prime Minister and Council of Ministers*, this Court held that **"where the petitioner's demand is to obtain citizenship in the name of the mother, the question of where the father is or what happened to him is not relevant."** This Court, therefore, finds and holds that, notwithstanding the legal provision permitting acquisition of citizenship in the name of the mother, the denial of citizenship to the petitioner constitutes an act in contravention of the law. A competent authority vested with legal powers is under a binding obligation to discharge its legal duty; failure to do so is not only contrary to the principle of equality but also inconsistent with the principle of equity¹⁴. This Court has, by express determination, already resolved disputes of this very nature.
13. In considering the question of whether or not a citizenship certificate may be issued without mentioning the name of the father, it appears that petitioner Bindhiya Maharjan, a permanent resident of Ward No. 6, Mahalaxmi Municipality, Lalitpur District, has declared herself to be an unmarried mother, having become a mother prior to entering into marital relations. She has further stated that, upon becoming pregnant, she was taken by her lover to reside at his rented room in Maharajgunj, Kathmandu; that when the pregnancy had reached three months, following a quarrel, he poured kerosene inside the room, locked the door, set fire from outside, and absconded; that she survived by fortune and thereafter came under the protection and care of her parents, with whom she has been living; and that on 2060/06/21 [corresponding date], her daughter, the petitioner Kristina, was born at Teaching Hospital, and that the responsibility of nurturing, upbringing, and educating the child has been borne by her, the unmarried mother. It further appears that petitioner Kristina Maharjan has stated that she has been nurtured and brought up by her mother alone and has been residing at her maternal home. She has declared that, as she seeks to establish her identity through her mother's name, it is neither reasonable

¹² Nepal Law Magazine 2068, No. 2, Decision No. 8557

¹³ Nepal Law Magazine 2073, No. 7, Decision No. 9627

¹⁴ Nepal Law Magazine 2073, Unit 9, Decision No.. 9687

nor just to compel her to mention the name of her father whom she has never known in the application, merely on the presumption that otherwise it would not be ascertained whether her father is a Nepali national. Kristina has accordingly refused to mention the father's name in the prescribed schedule. To dispel the suspicion of the Ward Office as to whether the person claimed to be her father might not be a Nepali citizen, a copy of the citizenship certificate of the said person showing his address to be in Makwanpur was submitted; nevertheless, the Office orally refused to recommend citizenship, stating that there was no law to issue citizenship in the name and address of the mother. Merely designating a particular individual as the biological father does not, in itself, justify compelling a child to recognize as "established father" a person from whom the child has received no affection, care, or responsibility; a person who has never discharged any parental duties and has never been physically present before the child, such that the child has not even seen the person's face. Compelling acceptance of such an individual as the father cannot be considered lawful or reasonable. The present case of petitioner Kristina Maharjan is an instance of precisely such circumstances. This court holds that, unless the person designated as the biological father has either himself acknowledged the child as his son or daughter, or, in his absence, his family provides credible proof of such fact in a manner acceptable to the child, the "identity" of the father must be regarded as undisclosed for such children. In the event that, at a later stage, the identity of the person recognized as father is officially established, the concerned parties may correct the relevant particulars in the birth and citizenship certificates based on such established facts. Even if subsequent evidence demonstrates that such father is a foreign national, the citizenship in question may be converted from citizenship by descent to naturalized citizenship. It is accordingly held that the holder of such a citizenship certificate shall not be deprived of Nepali citizenship.

14. In the context discussed above, upon consideration of the present petition, it is evident from the birth certificate issued by the hospital that the petitioner was born in Nepal, and the petitioner's educational certificates further reflect that their residence has been in Nepal. It is also noted that the petitioner's mother, Bindiya Maharjan, obtained a Nepali citizenship certificate, No. 107561, from the District Administration Office, Lalitpur, on 2057/04/17 (corresponding to 1 July, 2000) on the basis of descent. Having regard to the constitutional and legal provisions referred to in the foregoing cases, and the principles and interpretations laid down by this court, it appears that petitioner Kristina Maharjan has fulfilled the qualifications to be a Nepali citizen under Article 11(5) of the Constitution of Nepal and Section 3(5) of the Nepal Citizenship Act, 2063 (first amendment 2079). Consequently, the petitioner is entitled to acquire a Nepali citizenship certificate without mentioning the father's name. Any refusal to provide the necessary recommendations for birth registration or other formalities, and to issue the citizenship certificate on this basis, adversely affects the petitioner's constitutional right to obtain Nepali citizenship in accordance with law.
15. Accordingly, petitioner Kristina Maharjan, born in Nepal to an unmarried mother, having resided at her maternal home and pursued her education in Nepal, was subjected to an order by the office of Ward No. 6, Mahalaxmi Municipality, stating that "information has been received that Lokesh Subedi Chettri, the father of Bindiya Maharjan's daughter Kristina Maharjan, is not contactable. As the address of Lokesh Subedi Chettri is in Ward No. 4, Manhari, Makwanpur

District, registration of birth from this ward is not permissible,” in response to the application for registration of the petitioner’s birth certificate dated 2078/09/01 (corresponding to 16 December, 2021). Such order is found to be inconsistent with the Constitution of Nepal and the laws and reasoned principles discussed in the foregoing cases. The decision to register the birth based solely on the permanent address of the person designated as father has resulted in an infringement of the petitioner’s constitutional and statutory rights. It is therefore appropriate to annul the order dated 2078/09/01 (corresponding to) and direct that the petitioner Kristina Maharjan’s birth be registered and a citizenship certificate issued from Ward No. 6, Mahalaxmi Municipality, where she presently resides.

16. Accordingly, it is noted that the petitioner’s mother, Bindiya Maharjan, has obtained a Nepali citizenship certificate on the basis of descent; that the petitioner has been residing and studying at her maternal home in Ward No. 6, Mahalaxmi Municipality; that the biological father is missing and has never been physically present or known to the petitioner; that the person designated as the biological father has remained entirely out of contact, has never undertaken any search, care, or responsibility for the petitioner; and that, for these reasons, the petitioner Kristina Maharjan lacks an established paternal identity and has expressed in her application her unwillingness to mention the father’s name in her citizenship application. In such circumstances, the order dated 2078/09/01 (corresponding to 16 December, 2021) issued by the office of Ward No. 6, Mahalaxmi Municipality, refusing to register the petitioner’s birth is hereby held quashed through an order of certiorari. Accordingly, this court directs that the birth of petitioner Kristina Maharjan, who has been residing permanently since birth at her maternal home in Ward No. 6, Mahalaxmi Municipality, shall be registered with the mother’s name only, in accordance with her request. The concerned office of Ward No. 6, Mahalaxmi Municipality, is hereby instructed to provide the necessary recommendations required for the issuance of a Nepali citizenship certificate. Upon submission of the requisite documents in proper form, the authorities through an order of mandamus are further directed to issue a Nepali citizenship certificate to the petitioner on the basis of descent, in accordance with Article 11(5) of the Constitution of Nepal and Section 3(5) of the Nepal Citizenship Act, 2063 (first amendment 2079).
17. It is hereby ordered to provide a copy of this order to the respondents and to upload the order into the electronic system and to remove the case file from the registry and submit it to the Record Section.

Justice

Consenting with the above Opinion

Justice

Bench Officer: Nirajan Pandey/Simran Napit

Research Assistant: Aabha Dangol (Intern)

Computer Operator: Sujan Nepal

Dated Year 2080 of the Month of Shrawan Date 23 Day 3

(Corresponding to Year 2023 of the Month of August Date 8 Day 3)

