

Supreme Court, Division Bench
Honorable Justice Deepak Kumar Karki
Honorable Justice Hari Prasad Phyal

Order

076-WO-0947

Case: Certiorari/Mandamus

Petitioner: Tanishi Chand, age 18, grand daughter of Kriti Chand Thakur, daughter of Pooja Chand resident of Kathmandu Metropolitan City, Ward No. 3

vs.

Respondent : Ministry of Home, Singha Durbar, Kathmandu
District Administration Office, Babbar Mahal, Kathmandu

The summary and order of the writ petition submitted pursuant to Article 46 and 133 (2) and (3) of the Constitution of Nepal is as follows:

The petitioner was born on 2059/4/15 (corresponding to 31 July, 2002) to Ms. Puja Chand Thakur, residing at Ward No. 3, Kathmandu Metropolitan City, Kathmandu District. Both parents hold Nepali citizenship by descent. While the petitioner was still in the mother's womb, the father abandoned the mother, and their marital relationship was legally dissolved by the honorable Kathmandu District Court on 2065/2/9 (corresponding to 22 May, 2008). The mother has been solely responsible for the petitioner's upbringing, education, and welfare. Even upon reaching the age of eighteen, the petitioner has never met the father. The petitioner has completed Class 12 studies from Ullens School, Khumaltar, Lalitpur. In order to pursue higher education, the petitioner was granted a 60% scholarship for enrollment at DePaul University, Chicago, United States. As enrollment required a passport, and obtaining a passport necessitated proof of citizenship, the petitioner submitted an application to the District Administration Office, Kathmandu, requesting the issuance of citizenship in the name of the mother. The minor's identification certificate issued by the said office records the mother's name. Likewise, the school certificates of the petitioner also indicate the mother's name. The petitioner having attained the age of majority and being duly eligible to acquire Nepali citizenship under the laws of Nepal, submitted an application on 2077/10/27 (corresponding to 9 February 2021) to the Ward Office of Ward No. 3, Kathmandu Metropolitan City, Kathmandu District, seeking a recommendation for the issuance of citizenship in the petitioner's name. On the same date, the said Ward Office issued a recommendation for the registration of citizenship in the name of the petitioner's mother. However, when the petitioner presented the recommendation along with the requisite documents to the District Administration Office, Kathmandu, for the issuance of citizenship, the petitioner was informed that citizenship could not be issued in the name of the mother, and the application was endorsed and returned without any further guidance or direction. Having no alternative remedy available, the petitioner has approached this honorable court for appropriate relief.

The right to choose a family name by descent is a matter of my fundamental right. Article 11 (2) (b) of the *Constitution of Nepal* clearly provides that if both the father and mother are Nepali citizens, the child shall acquire Nepali citizenship by descent upon attaining the age of majority. Section 3 of the *Nepal Citizenship Act, 2063*, similarly provides that a person born to a father or mother who is a Nepali citizen shall be a Nepali citizen by descent. In accordance with Rule 3 of the *Nepal Citizenship Rules, 2063*, the petitioner submitted an application to the District Administration Office, Kathmandu, along with the necessary documents and the recommendation letter issued by the Ward Office of Ward No. 3, Kathmandu Metropolitan City. Article 15 of the *Universal Declaration of Human Rights, 1948*, Article 24 (1) of the *International Covenant on Civil and Political Rights*, Article 9 (2) of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, and Article 7 of the *Convention on the Rights of the Child (CRC)* collectively guarantee the right of both women and men to confer citizenship. In the case of *Sabina Damai vs. Government of Nepal* (Nepal Law Magazine 2068, Unit 2, Decision No. 8557, Page 247), the honorable Supreme Court held that the petitioner, having been born in Nepal to a Nepali citizen mother, was entitled to Nepali citizenship through the mother. Accordingly, the court issued an order of mandamus directing the to grant Nepali citizenship to the petitioner in accordance with law through the mother's name. Therefore, on the basis of the aforementioned legal provisions and precedent, the petitioner seeks an order of mandamus or any other necessary order directing the respondents to grant Nepali citizenship to the petitioner by descent in the name and family name of the mother. Further, in accordance with Rule 49 of the *Supreme Court Regulation, 2074*, the petitioner requests the issuance of an interim order directing the respondents to provide a citizenship certificate in the name of the mother. Given that the subject matter of the present writ petition concerns highly sensitive personal and public interests, the petitioner further requests that the writ petition be accorded priority and be heard expeditiously in accordance with Rule 73 of the Supreme Court Rules, 2074.

A show-cause notice on 2077/12/16 (corresponding to 29 March, 2021) 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 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. 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*. Accordingly, a hearing within 10 (ten) days has been scheduled and the parties are hereby directed to be informed and to submit the case file accordingly.

The rejoinder submitted by the District Administration Office states as follows: any person born in Nepal at the time of commencement of this Constitution who father or mother was a citizen of Nepal at the time of his or her birth, shall acquire Nepali citizenship by descent. Furthermore, Sub-section 1 of Section 3 of the *Nepal Citizenship Act, 2063*, prescribes that person born to a father or mother who is a Nepali citizen at the time of birth shall be a Nepali citizen by descent. Further pursuant to Section 9 of the same Act, the authorized officer is mandated to complete the procedures in accordance with Rule 3 of the *Nepal Citizenship Regulations, 2063*, and upon completion of procedures, the person shall be granted Nepali citizenship. A policy has been adopted to facilitate the issuance of Nepali citizenship certificates through all seventy-seven

District Administration Offices. In the instant writ petition, the petitioner has submitted a copy of the settlement agreement pertaining to the dissolution of the marriage between the petitioner's parents. The settlement agreement unequivocally identifies the father's permanent residence, name, and family name. In circumstances where, subsequent to the marriage, the wife's permanent residence coincides with that of the husband, or where the petitioner's father's name, family name, and permanent residence are fully established, it appears that the petitioner has approached this honorable court without fully disclosing these material facts. Accordingly, the petitioner's request to be granted Nepali citizenship solely in the name and family name of the mother by descent does not prima facie appear to be legally justified. Sub-rule (1) of Rule 3 of the *Nepal Citizenship Regulations, 2063*, provides that a Nepali citizen who has attained the age required to acquire citizenship by descent must submit an application to the concerned Chief District Officer along with: a citizenship certificate of the father or mother or within three generations of Nepalese citizens, a recommendation issued by the concerned local body establishing birth place and relationship, and the birth registration certificate, in the format prescribed in Schedule 1. As per the prevailing law, a Nepali citizen who fulfills the conditions and procedures is entitled to receive a Nepali citizenship certificate from the concerned authority. Failure to comply with the procedure and formalities prescribed by law is considered illegal and contrary to the rule of law. Accordingly, the respondents, the District Administration Office, have prayed that the present writ petition be dismissed.

The rejoinder submitted by the Ministry of Home reads as follows: The Ministry of Home Affairs is always committed to the protection and promotion of rights guaranteed under the Constitution and the laws of Nepal. It is evident that any Nepali citizen who fulfills the conditions and procedures prescribed by the Constitution and prevailing laws is entitled to acquire citizenship. The Ministry has not issued any order, directive, or circular to any subordinate authority instructing that a citizenship certificate be denied in a manner that would deprive the petitioner of the right to citizenship or violate the petitioner's constitutional and legal rights. Pursuant to the provisions set forth in the Constitution of Nepal, a bill to amend the Nepal Citizenship Act, 2063 is currently under discussion in the Federal Parliament. Once enacted as law, any person who fulfills the conditions, standards, and procedures prescribed therein shall be entitled to acquire citizenship in accordance with law. In the present writ petition, the petitioner has failed to specify any concrete reason or basis regarding what decision or directive of this Ministry allegedly caused the respondents to refuse to grant citizenship. Accordingly, the respondents, the Ministry of Home Affairs, have prayed that the present writ petition be dismissed

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Accordingly, the present writ petition has been listed and presented before this bench. On behalf of the petitioner, learned Senior Advocate Mr. Gopal Krishna Ghimire, along with learned advocates Mr. Sunil Kumar Pokharel, Mr. Khadga Bahadur Budhathoki, and Mr. Bishnu Basyal, argued that there is no dispute regarding the petitioner's entitlement to Nepali citizenship by descent, as both the father and mother of the petitioner are Nepali citizens. In accordance with Rule 3 of the *Nepal Citizenship Rules, 2063*, the petitioner submitted the prescribed documents along with the recommendation letter issued by the Ward Office of Ward No. 3, Kathmandu Metropolitan City, to the District Administration Office, Kathmandu, requesting the issuance of Nepali citizenship in the name and family name of the mother. However, the respondent, the District Administration Office, has refused to issue a citizenship certificate in the mother's name thereby depriving the petitioner the right to obtain a citizenship certificate. Consequently, the

petitioner is unable to pursue higher education abroad under the awarded scholarship. The learned counsel submitted that there is no valid reason to deny the petitioner a citizenship certificate under the *Constitution of Nepal*, the *Nepal Citizenship Act, 2063*, the *Civil Code, 2074*, as well as Nepal's obligations under international treaties, including the *Convention on the Rights of the Child, 1989*, and the *Convention on the Elimination of All Forms of Discrimination Against Women, 1979*. Accordingly, the learned counsel prayed that an order of mandamus be issued directing the respondent, the District Administration Office, to grant the petitioner a citizenship certificate in accordance with the petitioner's request.

Learned Joint Government Attorney, Mr. Sanjeev Raj Regmi on behalf of the respondent, the Government of Nepal, argued that, pursuant to Article 11 (2) (b) of the *Constitution of Nepal* and Sub-section (1) of Section 3 of the *Nepal Citizenship Act, 2063*, provisions have been made for the acquisition of citizenship by descent. In accordance with this framework, and pursuant to Rule 3 of the *Nepal Citizenship Rules, 2063*, the procedures for granting such citizenship must be completed. It is evident that a person who completes the procedures and formalities as prescribed under the law is entitled to receive a Nepali citizenship certificate. For this purpose, a Nepali citizen who has attained the age of sixteen years must submit an application in the format prescribed in Schedule 1 to the concerned Chief District Officer, along with: a citizenship certificate of the father or mother or within three generations of Nepali citizens, a recommendation issued by the concerned local body establishing birth place and relationship, and the birth registration certificate. Upon completion of the legal procedures in the prescribed format, there exists no legal impediment to the issuance of citizenship. However, it was further argued that since both the father and mother of the petitioner are Nepali citizens and their identities are established, and as the State is the guardian of every citizen, it is necessary to mention the names of both parents to ensure the petitioner's legal rights in the future and therefore, an order as sought by the petitioner need not be issued.

As both the father and mother of the petitioner are Nepali citizens, the petitioner is, by virtue of descent, entitled to acquire Nepali citizenship in accordance with the Constitution of Nepal, the Nepal Citizenship Act, 2063, and the Nepal Citizenship Rules, 2063. During the petitioner's minority, the marital relationship between the petitioner's parents was dissolved on 2065/11/9 (corresponding to 20 February 2009), whereafter the petitioner was solely raised and educated by the mother. In furtherance of this right, the petitioner submitted an application to the District Administration Office, Kathmandu, requesting the issuance of a citizenship certificate by descent in the name of the mother. The said application, however, was rejected on the ground that citizenship could not be issued solely under the mother's name and family lineage. Consequently, being deprived of the constitutional and legal right to acquire citizenship, the petitioner has approached this Honorable Court, seeking the issuance of an order of mandamus or such other appropriate order as this Court may deem fit, directing the respondents to issue a citizenship certificate in the name of the petitioner's mother. In response, the respondents have filed a rejoinder, submitting that the petitioner has placed on record a copy of the dissolution of marriage agreement, wherein the father's name, family name, and permanent residence have been clearly identified. It has further been contended that, by operation of law, the wife's permanent residence is deemed to align with that of the husband upon marriage, and that the petitioner, having concealed material facts relating to the father's identity, has not approached this honorable court with clean hands. On such grounds, the respondents have prayed for the dismissal of the present writ petition.

Upon perusal of the writ petition and the documents placed on record, and upon hearing the submissions made by the learned Senior Advocate, the learned Advocates, and the learned Joint Government Attorney, the following issues are found to arise for adjudication:

- (a) Whether the petitioner is a person qualified to acquire Nepali citizenship by descent;
 - (b) Whether a citizenship certificate may be issued solely in the name of the petitioner's mother; and
 - (c) Whether, in view of the petitioner's claims, an order as prayed for ought to be issued against the respondents.
2. With respect to the first issue, Article 10 (1) of the *Constitution of Nepal* provides that **"No citizen of Nepal may be deprived of the right to obtain citizenship."** This provision ensures the constitutional guarantee of the right to citizenship for every citizen. Likewise, Article 11 (2) stipulates that **"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."** and sub-clause (b) thereof provides that **"a person whose father or mother was a citizen of Nepal at his or her birth"** shall be deemed a citizen of Nepal by descent. From these provisions, it is evident that where, at the time of a person's birth, provided the father or the mother was a citizen of Nepal and the person was a permanent resident of Nepal at the commencement of the Constitution, then such person shall be deemed a citizen of Nepal by descent. Likewise, Article 39 (1) of the *Constitution of Nepal* provides that **"Every child shall have the right to a name and birth registration along with his or her identify."** Similarly, Section 3 of the *Nepal Citizenship Act, 2063*, stipulates that **"Any 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."**
3. Upon examination of the records annexed with the present writ petition, it is evident that the petitioner, Tanisi Chand, was born on 2059/4/25 (corresponding to 10 August 2002). It is further evident that the marital relationship between the petitioner's father, Sameer Bahadur Malla, and mother, Pooja Chand Thakur, was dissolved on 2065/2/9 (corresponding to 22 May, 2008), and that the dissolution of marriage was duly registered with the Lalitpur Metropolitan City, Lalitpur District, on 2065/9/14 (corresponding to 29 December, 2008) as per Certificate of Dissolution (Document No. 5). The records further show that the petitioner's father, Sameer Bahadur Malla, had been granted Nepali citizenship by descent on 2046/2/32 (corresponding to 14 June 1989) by the District Administration Office, Kathmandu (Citizenship No. Ba.La. 1/1354). Likewise, it is established that the petitioner's mother, Pooja Chand Thakur, was granted Nepali citizenship by descent on 2050/3/3 (corresponding to 17 June 1993) by the District Administration Office, Kathmandu (Citizenship No. 2666/1373/25617). On this basis, since it is established that both the father and mother of the petitioner are Nepali citizens by descent, the petitioner, Tanishi Chand, fulfills the qualifications prescribed under Article 11 (2) (b) of the *Constitution of Nepal* and Section 3 of the *Nepal Citizenship Act, 2063*. Accordingly, the petitioner is entitled to acquire Nepali citizenship by descent. In the absence of any rebuttal from the respondents, the petitioner's entitlement to citizenship by descent remains undisputed.
4. With respect to the second issue, namely whether the petitioner may obtain citizenship by recording only the mother's name, it is observed that Section 111(4) of the *National Civil Code, 2074*, provides that **"a person may, if they so wish, use the surname of the father, or**

of the mother, or of both.” From this legal provision, it is evident that the law clearly entitles any individual to adopt the surname of either the father, or the mother, or both. Accordingly, there arises no further necessity to seek additional clarification in relation to the petitioner’s choice to adopt either the mother’s or the father’s surname. With regard to the acquisition of citizenship, Rule 3 of the *Nepal Citizenship Regulations, 2063* provides that *“A Nepali citizen who has attained the age of sixteen years and wishes to acquire Nepali citizenship by descent shall submit an application in the format prescribed in Schedule–1 to the concerned Chief District Officer, along with the citizenship certificate of the father or mother or of a relative within three generations, and a recommendation issued by the relevant local body establishing the place of birth and relationship, or a copy of the birth registration certificate.”* On this basis, it is observed that in the petitioner Tanishi Chand’s application addressed to the Chief District Officer, District Administration Office, Kathmandu, for the issuance of a Nepali citizenship certificate, under Section 7 of the application leaves the father’s name, surname, address, and citizenship blank, whereas Section 8 records the mother’s name, surname, and citizenship. It is further noted that the application bears a recommendation from Mr. Deepak K.C., Chairperson of Ward No. 3, Kathmandu Metropolitan City. It is noted from the rejoinder submitted by the District Administration Office, Kathmandu, that “In circumstances where the father’s permanent residence, name, and surname are clearly identified, and where, after marriage, the wife’s permanent residence aligns with that of the husband, or where the petitioner’s father’s name, surname, and permanent residence are fully established, it appears that the petitioner has approached the court without full disclosure and with unclean hands; accordingly, the request to grant citizenship solely on the basis of the mother’s name and surname cannot be considered justifiable.” In these circumstances, it is necessary to deliberate on the second issue, namely whether the petitioner, Tanishi Chand, is entitled by recording solely the name of mother.

5. Citizenship defines the legal relationship between a state and its residents. Acquisition of citizenship not only provides formal protection by the state to an individual but also forms the basis for the enjoyment of fundamental social, economic, civil, and political rights. While social and economic rights may be enjoyed by others as well, in most countries the possession or non-possession of citizenship determines the entitlement to political rights. Overall, it is evident that citizenship ensures the legal and political rights of the concerned individual, and no further clarification is required on this point. On this basis, international instruments recognize the right to citizenship or nationality as a human right, ensuring that no person remains stateless and that every individual is able to acquire the citizenship of the relevant country.
6. Article 15 of the Universal Declaration of Human Rights (UDHR), 1948¹, guarantees the right of every individual to a nationality and provides that no one shall be arbitrarily deprived of their nationality, thereby recognizing the right to nationality as a fundamental human right. Similarly, Article 24 (3) of the International Covenant on Civil and Political Rights (ICCPR), 1966², provides that every child shall have the right to acquire a nationality. Article 9 (2) of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*,

¹ Article 15 of Universal Declaration of Human Rights (UDHR), 1948, states the following “Everyone has the right to nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

² Article 24 (3) of International Covenant on Civil and Political Rights (ICCPR), 1966, states the following: “Every child has the right to acquire a nationality.”

1979³, mandates State Parties to grant women equal rights with men with respect to the nationality of their children. Likewise, Article 7(1) of the *Convention on the Rights of the Child (CRC)*, 1989⁴, provides that every child shall have the right to a name and to acquire a nationality immediately after birth, and Article 7 (2) obligates States Parties to take all appropriate measures, in accordance with national law and international instruments, to ensure that children are not left stateless. In view of the foregoing discussions, and having regard to the international legal instruments to which Nepal is a Party, it is evident that every individual has the right to acquire a nationality with an established identity, and that this right shall be equally guaranteed to women as to men.

7. It is noted that both the Constitution of Nepal and the international instruments to which Nepal is a Party have recognized the right of a child born in Nepal to a Nepali father or mother to obtain a certificate of Nepali citizenship upon attaining majority. It further follows that, without being a citizen, no individual may exercise the political or civil rights of the State, nor may such person participate in any election, cast a vote, or enjoy any constitutional or legal rights vested solely in Nepali citizens. In this regard, the *Committee on the Elimination of Discrimination against Women (CEDAW)*, in its Concluding Observations on Nepal's Sixth Periodic Report⁵, has noted that denial of birth registration and citizenship to children of single women has resulted in such children facing difficulties, upon reaching adulthood, in exercising the right to vote, securing employment in public institutions, opening bank accounts, obtaining a driver's license, ensuring property rights, accessing education, and acquiring documents necessary for foreign travel. Similarly, the *Committee on the Rights of the Child (CRC)*, in its Concluding Observations⁶ on Nepal's Third to Fifth Periodic Reports, has expressed concern over the impediments faced by Nepali children in acquiring nationality. It follows that, where a child is born within the territory of Nepal to a father or mother who is a Nepali citizen, such person, upon attaining eligibility for Nepali citizenship and upon submitting an application in the manner prescribed by law, must be granted a certificate of Nepali citizenship in a simple and uncomplicated manner.
8. With respect to the issuance of citizenship in the name of the mother, upon consideration of the judicial practice of this Court, it is noted from the case of *Sabina Damai v. Office of the Prime Minister and Council of Ministers* (Nepal Law Magazine, 2068, Vol. 2, Decision No. 8557)

³ Article 9 (2) of Convention on the Elimination of All Forms of Discrimination against Women, 1979, states the following: "State parties shall grant women equal right with respect to the nationality of their children."

⁴ Article 7 (1) of Convention on the Rights of Child (CRC), 1989, states the following: "The child should be registered immediately after birth and shall have 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." And Article 7 (2) prescribes that "States 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."

⁵ Committee on the Elimination of Discrimination against Women under Para 30 (b) of the Concluding Observation on the Sixth Periodic Report of Nepal (14 November 2018) CEDAW/C/NPL/CO/6 states the following: "That women, in particular single mothers, are being denied citizenship certificates and registration of their children, which prevents those women and their children from opening bank accounts, obtaining driver's licenses, voting, managing their property, gaining access to education, acquiring travel documents, applying for employment in the public sector and benefitting from social service."

⁶ Para 26 on the Concluding Observations on the Combined Third to Fifth Periodic Reports of Nepal (8 July 2016) (CRC/C/NPL/Co/3-5) of Committee on the Rights of the Child states the following: "The Committee is concerned about the hindrances experienced by many children to obtaining Nepalese nationality. It is especially concerned that (a) acquisition of Nepalese citizenship by descent is conditional on evidence that father and mother of the child are Nepalese citizens;..."

that the interpretation was made to the effect that “even if either the father or the mother alone is a citizen of Nepal, such person shall be entitled to acquire Nepali citizenship.” In that petition, it was further noted that the identity of the petitioner’s father was not established. This Court has already settled that, where the identity of the mother is established and the parents are residing in different locations⁷, the recommendation for citizenship may be made from any one such place; and once such recommendation has been issued by the competent authority, neither the father nor the mother shall be required to appear before the District Administration Office⁸ for the purpose of identification. In the writ petition for mandamus in *Sajda Sapkota vs. Office of the Prime Minister and Council of Ministers* (Nepal Law Magazine, 2073, Vol. 7, Decision No. 9626), this court has laid down the principle that, **where the Constitution and the law provide that a person born in Nepal to a Nepali mother and residing in Nepal may obtain citizenship in the name of the mother, it cannot be considered lawful to refuse the issuance of a citizenship certificate on the ground that the father is foreign or of a different nationality, when the person has otherwise attained the qualifications for citizenship under the Constitution and the law.** It is further noted that in other cases, this Court has consistently interpreted the law to allow acquisition of citizenship in the name of the mother⁹.

8. It is evident from the record that, in the present petition, the District Administration Office, Kathmandu, issued a Minor Identity Certificate (No. 2669) to the writ petitioner, Tanishi

⁷ In the writ petition for mandamus in *Ranjit Thapa v. Government of Nepal* (Nepal Law Magazine, 2066, Vol. 6, Decision No. 8175), this Court has laid down the principle that, as both the father and the mother are to be regarded as progenitors, the right to obtain a certificate of citizenship in the name of either the father or the mother has already been recognized under Rule 3 of the Nepal Citizenship Rules, 2063. Accordingly, even if the father and mother belong to different places of origin, if the applicant, upon completing the prescribed procedure along with the recommendation of the competent authority, seeks citizenship on the basis of the address of either the father or the mother, such applicant shall be entitled to obtain the citizenship certificate from the chosen parental address.

⁸ In the writ petition for mandamus in *Arika K.C. v. District Administration Office, Kathmandu* (Nepal Law Magazine, 2075, Vol. 10, Decision No. 10113), this Court has established the principle that, where the identity of the father or mother has been clearly established through a birth certificate or other documentary evidence, and a recommendation has been obtained from the competent authority for the purpose of acquiring a citizenship certificate, any refusal to issue the citizenship certificate on the ground that the father or mother must appear before the District Administration Office would constitute an infringement of the constitutionally guaranteed right to acquire citizenship.

⁹ In the writ petition for mandamus in *Srijan Kharel v. Office of the Prime Minister and Council of Ministers* (Nepal Law Magazine, 2073, Vol. 9, Decision No. 9687), this Court laid down the principle that, since the petitioner sought citizenship in the name of the mother, questions such as the whereabouts or status of the father were irrelevant. It was held that, where the law provides for acquisition of citizenship in the mother’s name, depriving a petitioner of citizenship constitutes an act contrary to law. Legal authorities vested with statutory powers are required to discharge their duties; failure to do so not only violates equality but also undermines the principle of justice. The Court further observed that, given that the petitioner submitted the application to the District Administration Office, Kathmandu, the respondent office ought to have considered the matter with due sensitivity. Similarly, in *Bipana Basnet v. Office of the Prime Minister and Council of Ministers* (Nepal Law Magazine, 2075, Vol. 8, Decision No. 10066), this Court held that the Constitution, laws, and judicial precedents of Nepal allow citizenship to be acquired in the name of either the father or the mother. Since both parents provide equal genealogical basis for the child, restricting the issuance of citizenship on the ground that the mother’s surname cannot be recorded—while insisting only the father’s surname be used—constitutes discriminatory treatment. Such a restriction violates the petitioner’s right to choose the family name and also infringes upon the principle of equality between men and women. Further, in the writ petition for mandamus in *Lakshmi Kumari Sharma v. District Administration Office, Kathmandu* (Nepal Law Magazine, 2077, Vol. 3, Decision No. 10458), this Court emphasized that citizenship is an extremely sensitive matter, closely tied to an individual’s personal identity. The absence of citizenship obstructs education, employment, foreign travel, and other fundamental activities. In situations where a person is substantively recognized as a citizen, imposing even minor procedural obstacles that cause difficulties or play upon the individual’s sensitivities cannot be considered just or fair. This body of jurisprudence consistently affirms the right of individuals to acquire citizenship through their mother’s name, the necessity of administrative sensitivity, and the protection of equality and personal rights.

Chand, on 2065/10/07 (corresponding to 20 January, 2009), wherein the designation “Father” was replaced with “Mother,” and the name and surname of the mother were duly recorded. Furthermore, pursuant to this Minor Identity Certificate, the Nepali passport (No. 4384210) issued to the petitioner, Tanisi Chand Thakur, identifies the nearest person in Nepal as Puja Chand Thakur, Kathmandu. This Court finds that the Minor Identity Certificate has already been issued in the name of the mother, and the passport obtained by the petitioner likewise reflects only the mother’s name, thereby affirming the petitioner’s established maternal identity.

9. This Court finds that, upon review of the foregoing cases, Article 10 (1) of the Constitution of Nepal unequivocally guarantees that no Nepali citizen shall be deprived of the right to acquire citizenship. Further, Article 11(2) constitutionally provides that any person born in Nepal, where either the father or the mother is a Nepali citizen and has permanent residence in Nepal shall be recognized as a Nepali citizen on the basis of descent. It necessarily follows that the right to acquire Nepali citizenship exists even where only one parent either the father or the mother is a Nepali citizen is. Moreover, Article 39 (1) of the Constitution guarantees children the right to a name and birth registration along with their identity, thereby safeguarding their right to personal identification. The term “identity” as used in Article 39 (1) must be understood to include not merely personal identification but also the individual’s dignity, self-respect, and the autonomous right to choose and assert one’s own identity. It is further held that, as an aspect of the inherent dignity¹⁰ rights of a human being, the very foundation of individual freedom, every person must possess the authority to choose and assert their identity with dignity. This includes the right to determine, in a permanent identity document that remains with them, whether to include or omit the name, surname, and the names of the father or mother according to their preference. Similarly, Section 4(6) of the Children’s Act, 2075, provides that a child may, if they so desire, use the surname of the father, mother, or both. Likewise, Section 111(4) of the National Civil Code, 2074, confers upon an individual the freedom to choose the surname or lineage of the father, mother, or both. These statutory provisions must be understood in this context, affirming the individual’s autonomy in the selection of their family name and lineage. This court further finds that, in the various writ petitions reviewed above, it has been consistently held that where the identity of the father is not established, citizenship may be issued in the name and surname of the mother. In the present petition, although the identity of the father is known, the petitioner has, for valid personal reasons, elected not to disclose the father’s identity in the citizenship certificate. This court holds that, in such circumstances, where the petitioner does not wish to have the father’s details recorded in a citizenship certificate—which serves as a permanent representation of the petitioner’s identity—and where the Constitution and law expressly guarantee the right to choose one’s lineage, the petitioner cannot be compelled to disclose the father’s name. In light of the constitutional and legal provisions that provide a liberal framework regarding identity and lineage in matters of citizenship, this court finds that the

¹⁰ Preamble of the International Covenant on Civil and Political Rights, 1966 states the following: “... recognition of the inherent dignity and of the equal and inalienable rights of all members of human family is the foundation of freedom, justice and peace in the world, recognizing that these rights derive from the inherent dignity of the human person,” and Article 10 (1) stipulates that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of human person.”

issuance of a citizenship certificate reflecting only the mother's name, as requested by the petitioner, is entirely justified and lawful.

10. Turning to the third issue for determination: as to whether or not an order should be issued against the respondents in accordance with the petitioner's request. This court finds that, even where citizenship is obtained solely in the name and surname of the mother, the petitioner retains the full right, in the future, to claim any inheritance or other legal entitlements from the father. It is incumbent upon the State to ensure that such rights are duly protected. This Court holds that, while issuing the citizenship certificate reflecting only the mother's name and surname as requested by the writ petitioner, the State must be mindful of the potential risk that the petitioner's exercise of certain legal rights derivable from the father could be temporarily affected. This court holds that, in order to protect the best interests of the child, the State, as the ultimate guardian of every citizen, must exercise balanced and prudent conduct in matters concerning citizenship. In the present case, although the writ petitioner has not included the father's name in the application for citizenship, documents evidencing the dissolution of the relationship between the petitioner's mother and father, as well as other records disclosing the identities of both parents, have been submitted. It is therefore permissible for the office responsible for issuing citizenship to record and update such information in its official registers. This court further finds that, having fulfilled the minimum procedural requirements under the law, and having applied for the citizenship certificate solely in the name and surname of the mother while providing other evidence confirming that the father is a Nepali citizen, there is no indication that the petitioner seeks to conceal the father's identity to obtain citizenship unlawfully. In these circumstances, the issuance of the citizenship certificate reflecting only the mother's name, as requested by the petitioner, cannot be denied. The prayer of the writ petitioner is accordingly justified.
11. Accordingly, for the reasons and on the basis of the foregoing discussion, it is evident that the writ petitioner, Tanishi Chand, whose father and mother are both Nepali citizens and between whom the marital relationship has been dissolved, is eligible to acquire citizenship by virtue of age. Having applied to the District Administration Office, Kathmandu, seeking a Nepali citizenship certificate in the name and surname of the mother alone, it is clear that, under the petitioner's right to choose family name, citizenship may be obtained solely through the mother's name. Furthermore, as the documents submitted along with the application clearly establish the identity of both the mother and the father, the office is directed to record these details in its registers and an order of mandamus is hereby issued in the name of the District Administration Office to issue the citizenship certificate reflecting only the mother's name and surname, as requested by the petitioner. It is hereby ordered to provide a notification of this order to the respondents through the Office of the Attorney General and to upload an electronic copy of the order and to remove the case file from the registry and accordingly submit the same to the Record Section

Justice

Consenting to the above Opinion:

Justice

Bench Officer (Under-Secretary): Shiva Bahadur Thapa

Computer Typist: Ramala Parajuli

Dated: Year 2078 of the Month of Shrawan Date 24 Day 1

(Corresponding to Year 2021 of the Month of August Date 8, Day 1)