

**Supreme Court, Joint Bench**  
**Honourable Justice Shree Minbahadur Rayamajhi**  
**Honourable Justice Shree Ramnagina Singh**  
**Writ No. 3 3802 of the Year 2062**  
**Date of Order: 18 Dec 2006**

Subject : Mandamus.

Plaintiff: Bimal Bshwokarma et.al resident of Kathmandu Metro City Ward No. 10, Senior Legal Officer of Dalit NGO Federation located at Kathmandu Metro City, Ward No. 1 of Kathmandu District.

vs

Defendant: Office of the Prime Minister and Council of Ministers, Government of Nepal, Singh Durbar et.al

- Nepal is a multi-ethnic, multilingual, multi-religious and multi-cultural nation. It is a State where people of different races, communities and different religious sects live, and where it is found that social evils such as untouchability prevailing traditionally among these community and religious sects are not only prevented and prohibited but also made punishable by law. However, the fact that the practice of untouchability still prevails in society due to the situation of caste-based discrimination as a result of social inequality cannot be denied.
- It is necessary to raise public awareness in order to end the practice of untouchability which has been prevalent for a long time, and since this work cannot be done by the government alone, it will be possible only through the collective efforts of the Nepalese government, government agencies, local bodies, civil society, associations and conscious citizens. So, an order of mandamus will be issued in the name of the defendants to conduct public awareness programmes to end caste based discrimination.

(Case No. 17)

On behalf of plaintiff: Learned advocates Mr Mahesh Narayan Das, Mr Sambodhan Limbu, Ms Gomati Sunar, Mr. Shyam Kumar Bishwakarma

On behalf of the defendants: **Assistant Attorney General** Mr Bharatmani Khanal, Learned advocate Mr Hemraj Bhattarai

Adopted precedent:

#### Order

1. **Justice Min Bahadur Rayamajhi:** Brief facts and order of this petition submitted in this Court as per Article 23/88 (2) of the Constitution of the Kingdom of Nepal, 1990 are as below:

2. Dalit NGO Federation is the federation of Dalit non-governmental organizations established and run with an objective of uplifting the Dalit community - who are socially exploited, politically excluded, and termed as "Dalits" from the standpoint of labour - and bringing them to the mainstream of national development. It has been providing necessary legal support for the elimination of caste-based discrimination, the upliftment of the Dalit community and for the protection, promotion and restoration of Dalits' fundamental and constitutional rights and human rights.

3. In Nepal, the Dalit community, which suffers from the discrimination of untouchability on the basis of caste, is forced to endure the caste-based discrimination of untouchability in public water sources, so they are discriminated against and subjected to daily beatings and insults due to their caste and are not allowed to use the water springs, wells, streams, ponds, lakes, rivers, water tanks, bathing places, swimming pool, and even cremation places. In the same way, as they are prohibited from using public places such as government offices, schools, shops, roads, banquets etc., and even as the responsible state agencies know that the Dalit community is not allowed to use and/or cannot use these places and that such immoral, inhuman, and illegal treatment is being done to them, the government bodies have remained mum and thus failed to carry out their duties. As a result, there is a situation whereby the Dalit community is not allowed to live a dignified life.

4. Due to the above mentioned acts of commission and omission, the Dalit community including us, the petitioners, have faced the violation of the right to dignified life in accordance with the right to equality as per Article 12(1) of the Constitution of the Kingdom of Nepal, 1990, the fundamental right to personal freedom as well as the human rights guaranteed by the Universal Declaration of Human Rights, 1948 and the International Convention on the Elimination of All Kinds of Racial Discrimination, 1965, and have have appeared before the honorable Court with the present petition.

5. Therefore, the petition with a request to issue an order of mandamus in the name of the defendants to make, in accordance with the spirit of the constitution, a strict law with a provision of compensation to eliminate untouchability based on caste-based discrimination, to prescribe water sources such as water springs, wells, streams, ponds, lakes, rivers, water tanks, bathing places, swimming pools as public places, and to conduct public awareness awareness programmes against untouchability.

6. What happened in all of those issues mentioned in the petition? Why should the order as requested by the petitioner not be issued? The order of this Court dated 27 March 2005 to send a written reply within 15 days from the date of receipt of the order by sending a notice in the name of the opponents, and to submit as per the rules once the written reply is obtained.

7. The written response from the Ministry of Home Affairs of the Government of Nepal to repeal the unreasonable request with the plea that the Constitution of the Kingdom of Nepal and other prevailing laws state that no person should be discriminated against on the basis of caste, and that there is a legal provision that anyone who commits such an act will be punished, and that the Government of Nepal has always been committed to the implementation of the said law.

8. It is found that the Country Code's Chapter on Court Procedure No. 10 provides for the dignified life of the Dalit Community with the provision that anyone who commits untouchability based on caste-based discrimination or deprives him/her from attending a public place or using things of public use can be punished with imprisonment up to one year or a fine of up to three thousand rupees or both, while Some Public (Offenses and Punishment) Act, 1970 the Water Resources Act, 1992 have provisions that do not allow caste discrimination. The written response from the Ministry of Law, Justice and Parliamentary Affairs pleading for the annulling of the application arguing that the victims can take recourse to the legal remedies by making complaints to the concerned agencies if the above mentioned legal provisions are violated.

9. The Government of Nepal has been active in creating a situation of equal enjoyment of the fundamental rights granted by the Constitution of the Kingdom of Nepal, 1990, while striving for the upliftment and development of the Dalit class by ending caste-based discrimination. At the same time, the written response of the Office of the Prime Minister and Council of Ministers of the Government of Nepal stating that the petition should be dismissed as the Government of Nepal is taking action against those who discriminate against caste-based in accordance with the the prevailing law.

10. Written response from the Ministry of Local Development, Government of Nepal pleading for the annulment of the petition with the argument that in order to end the practice of untouchability which has been rooted in our society for a long time, the Ministry of Local

Development and its local bodies, associations, and even civil society have done positive work in that direction. Consequently, untouchability or social discrimination based on casteism is gradually ending. Therefore, the petition deserves to be quashed.

11. Written response from the headquarter of the Nepal Water Corporation with as below: Claims made by the petitioners against the Water Corporation are not established facts. No one has been discriminated against in any way in the tap water distributed by the Corporation. The claim that the Corporation discriminates against the Dalits in the distribution of water by creating separate taps for Dalits is completely false and fabricated. It cannot be said that the events that sometimes happen in some uneducated society due to the conservative thoughts represent the whole nation, society and culture. Therefore, the unauthorized petition should be dismissed.

12. In this petition that was forwarded for the hearing after being put in the cause list as per rule, learned advocates Mr. Mahesh Narayan Das, Mr. Samvodhan Limbu, Advocate Gomti Sunar, Advocate Mr. Shyam Kumar Vishwakarma et.al., representing the petitioner, stated that whereas the Article 11 of the Constitution of the Kingdom of Nepal, 2047 provided for the right to equality, and that the International Convention on the Elimination of All forms of Racial Discrimination, 1965 also prohibited the policy of discriminatory treatment amongst the citizens, it was found that the Government of Nepal and other government agencies including the Water Corporation followed a discriminatory practice by providing separate taps for drinking waters to the Dalits and non-Dalits. They pleaded for the issuance of an order of mandamus in the name of the opponent asking them to designate the water springs, taps, wells, ponds, lakes, water tanks etc. as public spaces and to conduct public awareness programmes against untouchability.

13. Mr. Bharatmani Khanal, the Assistant Attorney General, who represented the opposition, the Office of the Prime Minister and Council of Ministers, the Government of Nepal, argued that as the practice of case-based racial untouchability was punishable as a criminal offense in accordance with the Government Cases Act, 1992, the petition, therefore deserved to be quashed.

14. Advocate Mr. Hemraj Bhatta representing the opponent Nepal Water Corporation presented the argument that the water supply corporation does not discriminate on the basis of caste while distributing drinking water and therefore the petition submitted without having any locus standi should be dismissed without merit.

15. After listening to the arguments made by the learned legal professionals and studying the case file together with the petition, it was seen that a decision should be made regarding whether the order as per the petition could be issued or not.

16. While considering the decision, it is observed that the Dalits are deprived of the right to use, in the same manner as by the non-Dalits, the water springs, taps, wells, ponds, lakes, water tanks etc. in violation of the right to equality as granted by the Article 11 of the Constitution of the Kingdom of Nepal, 1990 and the rights provided for in the Universal

Declaration of Human Rights, 1948, the International Convention on the Elimination of All Forms of Racial Discrimination, 1965. The petitioners therefore have demanded the Court to issue an order of mandamus in the name of the opponents to make laws with provisions of punishments for those who discriminate against on the basis of caste, and to conduct public awareness programmes. Under Article 11 the Right to Equality and sub-article (4) of the Constitution of the Kingdom of Nepal, 1990, no one shall be discriminated on the bases of caste, and nobody shall be prohibited from being present in a public place or using the goods of public consumption. It is provided that such acts shall be punishable as per law. In addition, there is a legal provision, as per No. 10 (a) of *Adal* of the Country Code that if somebody commits a discriminatory behaviour of untouchability or somebody is prevented from being present in the public places or from using public goods, the offender shall be punished with an imprisonment of one year or three thousand rupees or both. This means that in case of the violation of the clearly stated provisions of the Article 11 (4) of the constitution, the provision of sanction is provided for in 10 (a) of *Adal*, and the cases to be punished as per this provision are listed as part of the annex (1) of the Government Cases Act, 1992 by publishing them in the National Gazette with the notice of 28 July 2003. This means that those who commit the discriminatory behaviours of untouchability based on caste will be prosecuted and punished on charge of Government criminal case. Therefore, there is no situation to show, as claimed by the petitioners, that there is no law to punish the offenders of the crime of untouchability and caste-based discrimination. Although there is a legal provision to treat the caste-based discrimination and untouchability as crime, and to punish such crimes, there is no situation, even today, to do deny the fact that caste-based discrimination and untouchability still prevails in our society.

17. Nepal is a multiethnic, multilingual, multireligious and multicultural nation. Nepal is a State where people of different caste, ethnicity, community, creed, and religious sects live together. It is found that in Nepal the long-prevailing social malpractices such as untouchability between these various community and religious groups were not only eradicated and prohibited but also made punishable by law. Despite this, the situation of caste-based discrimination has arisen due to the social inequality, and the reality of the still prevailing practice of untouchability in the entrenched caste system in Nepal cannot be denied. It is essential to raise awareness for the eradication of such a long held practice of untouchability, and this is not possible only by the government. Therefore, as it will be possible only through collective efforts of the Government of Nepal, the government agencies, local bodies, civil society, organizations and associations, and the conscious citizens, it is herewith issued this order of mandamus in the name of the opponents - Government of Nepal, Ministry of Home Affairs, Ministry of Local Development et.al. - to conduct public awareness programmes towards eradicating caste-based discrimination and untouchability.

I concur with the above decision.  
Justice Ramnagina Singh

Dated Monday 18 December 2006.