

Supreme Court, Division Bench
Hon'ble Justice Kalyan Shrestha
Hon'ble Justice Awadesh Kumar Yadav
Order
Writ No. 3416 of the year
Sub: Mandamus/ Certiorari
Petitioner

Mohan Sashanker, resident of Kathmandu District, Min Bhawan, Ward no: 4.....1

Vs.

Respondents

Nepal Government, Office of Prime Minister and Council of Ministers.....1

Nepal Government, Ministry of Education and Sports, Keshar Mahal, Kathmandu.....1

The Pashupati Development Area Fund, Bankali, Gaushala, Kathmandu.....1

Nepal Ved Vidyashram, Sanskrit High school, Kathmandu.....1

Shree Keshar Prasad Adhikari, Principal of Nepal Ved Vidyashram, Kathmandu.....1

The facts and the verdict delivered upon the writ petition filed in this court as per article 23 and 88(2) of the Constitution of the Kingdom of Nepal, 1990 are briefly as follows:

The Petitioner who has faith in the Hindu religion is a lawyer by profession. Being an informed citizen, the petitioner bears responsibility towards the society. He has always been vigilant towards social norms and values. Against this backdrop, while evaluating the condition of the society and the pace of development, in a neutral way, he feels the thought of illusory development of our society seems to be solely affected by materialism. The unseen reason behind is that the human society in the name of modernization has overlooked human values, beliefs, morality and ethics which can be speculated easily. Furthermore, the apparent reason for overlooking all these values is the overwhelming dominance of materialism. Besides, another important reason that can be emphasized is the regression of fundamental tradition, culture, social customs, and practices which can be called spiritual though. In his understanding in order to reinstate, a cultured, progressive and esteemed society, the Sanskrit language, which is popular, acceptable to all, and very rich, besides the valuable epic Veda written in the Sanskrit language requires in-depth study and research. If we become able to unearth the core and essence of those epics the absolute spiritual beliefs of the eastern philosophy and the pillars of faith can be made stronger and a direction can be provided to susceptible material development and the uncontrolled pace of development. The petitioner strongly believes that the foundation of modern development may be laid down thereafter.

Though the petitioner did not get an opportunity to study Sanskrit language, he felt the necessity of imparting the knowledge of Sanskrit language and the Vedas to the new generation and to motivate them to take up Sanskrit language. He had been in search of such kind of institution where Sanskrit can be learnt. During his search for Sanskrit learning centre run on traditional learning basis, he reached Pashupati Vidyashram. He had reached respondent no.4 with a view to getting enrolled a few kids who were closer to him. The petitioner put up lot of questions to the Principal of the Vidyashram to acquire knowledge about the admission procedure. The respondent provided him with an admission form and also gave explanation to his queries; the petitioner was surprised to see the provisions mentioned in the admission form. In the admission form as well as the information provided by the respondent about studying Sanskrit, they have very strict and conservative terms and conditions that do not exist elsewhere. It mentions that the person seeking admission should be "a Upadhya Brahmin whose Upanayan Sanskar (the ritual of having sacred thread) should have been completed. Those terms and conditions were against human dignity, unscientific and discriminatory. It is against the entire caste system. The rules they have can divide the community except the Upadhya Brahmins. Moreover, the rules showed generosity to the limited number of population of Upadhya Brahmins and are prejudiced towards rest of the population. The terms and conditions are inappropriate. Thus those rules are unequal, prejudiced, and unconstitutional. It is also an issue of public interest as it deprives a large number of population from giving and receiving Vedic education. The petitioner contended that due to lack of access to other alternative remedy, he is forced to exercise the extraordinary jurisdiction of Supreme Court to seek annulment of the unconstitutional rules and traditions through this writ petition.

In totality the Vedas are a treasure of wisdom. It is a medium of guidance for human life. It is also a source of looking at life and at one's own self. It is also the actual source of life and the universe. It is the inner content as well as learning of the past, the present and the future. But confining the same life, universe, philosophy and education to only a specific race, color or community will not serve the purpose of the wisdom of Hindu religion and the eastern philosophy. Can the knowledge and philosophy secure the complete form? Definitely not. Besides, what uniformity do the Vedas and the particular race share or what is the scientific basis of such uniformity that only a particular race receives such education excluding others. The Vedas are also a science. Science is coordination between act and reason. In case coordination between reason and effort fails science will fail, the Vedas will fail, individuals will fail and our living universe will fail as well.

The writ petitioner stated that the condition mentioned in the admission form required an individual to be an "Upadhya Brahmin". This means that one should be a pure brahmin. But what is the basis for testing the purity of human race? Are the Vedas accessible only to Upadhya brahmins? What is the rationality behind introducing rules that favor Upadhya brahmins. Is it that only pure Brahmins can take up the study? How do we test the purity of the race? Does a recommendation from a VDC prove the validity of purity? The recommendation from a VDC can be achieved by false representation or through undue influence. Taking recommendation from VDC is not

the appropriate way to acquire the certificate of race and is not a valid body to issue certificate. A scholar named Rajnikant Shastri from India, who himself belonged to a Brahmin family, has written on the purity of race in a book entitled “The Rise and Fall of Hindu Race” in which he has said that if the race determines the purity, then most of the saints come from clans other than Brahmins. Saint Ring who had helped king Dasrath to perform a religious ceremony for seeking the birth of a son came from a deer, Kaushik come from bunch of kush, saint Gautam came from the back of shashak, saint Balmiki came from the mud, Saint Vyas from a daughter of a Rewat, saint Parasar from Chandalika, saint Basitha from a prostitute, saint Bishwamitra from kshatriya, saint Agustya from a pot, saint Mandabya from Mandukii, saint Bharadwaj from a shudra female and Saint Narad from a slave woman. It is heard from a holy book Puran that these saints have been accepted as Brahmins not on the basis of their caste but due to their knowledge. Thus, nobody can be a Brahmin merely on the basis of caste.

The petitioner further stated that during his informal discussion with respondent No. 5, he came to learn that according to Gurukul tradition only Upadhya Brahmins were educated in the institution and in case non-Upadhya Brahmins showed interest they may join other institutions for study. Some others may take up study on their own. However, there was no reasonable or scientific basis for such an argument. It is not mentioned anywhere that only Upadhya Brahmins will be educated in Gurukul tradition. Similarly, so far another argument was concerned no law prohibited to a public institution of one’s choice. If the state does not repeal or amend the discriminatory rule of such a school or ignores it and rather gives it protection it shows that the state itself is discriminatory. The state is liable and condemned for such an act. The state gets no exemption in showing discriminatory behavior. Likewise, as regards the third reason relating to taking up the study on ones’ own, if it is so, then what is the justification for having colleges and universities? The presence of students and teachers at colleges/Universities determines their justification. Or else the significance of the concept of institution gets lost. The essence of the Vedas ceases to exist in the absence of Guru. It is impossible to acquire knowledge of the Vedas without a Guru. With the advancement of technology, learning is possible through computers. And yet the traditional learning system continues to exist. Therefore, learning of the Vedas is possible through traditional learning system. So the advice to take up its study on self seems to give room for discrimination. Not letting non-Brahmins to take up education of the Vedas deprives a huge population of its knowledge and keeps them in darkness. Veda education deprives huge population from keeping them ignorant on Veda education. In addition, in the Mahabharat era, Eklavya who was a shudra had displayed courage to go to a Guru to learn archery. In the 21st century, if it is stipulated to get traditional Vedic education one has to come from pure Upadhya Brahmin clan or else he will not be allowed even to fill up the admission form, such a provision is against the law, justice and the concept of human rights and so unacceptable. On the one hand our religious belief says that if an individual is inculcated with high tradition, system, behavior, rules, moral character, food habits and academic practices, he/she is believed to have achieved the divine height of a Brahmin. On the other hand if only a Upadhya Brahmin sought after in order to attain Brahmin hood or to unravel the mysteries of the Vedas,

it is completely self-contradictory. Because why do Upadhy Brahmins need to go to a traditional learning centre? As Brahmins should they not possess the knowledge of the Vedas right from their birthright from their birth .It means that attending traditional learning centre involves the practice of training a person into high moral character, food habits and rules. If it is so it is clear that to attain knowledge one requires practice and hard work. Therefore such a discriminatory rule that tends to create a cliff between the Upadhy Brahmins and non-Brahmins is not acceptable.

The petitioner further contended that on one hand that the norms and values as well as the philosophy of the Hindu religion believe that all human beings are equal and on the other the concept of Constitution the Kingdom of Nepal, 2047 and the Declaration of the House of Representatives 2063 is based on the principle of equality and equity. On this basis Sections 1, 2, 3 and 4 of Article 11 of the Constitution of Nepal, 2047, do not forbid learning of Veda irrespective of caste, creed, race, religion, sex. Individuals are allowed to learn Ved from any institution. Although the education policy introduced by the government of Nepal has provided special privilege to the underprivileged for getting education, yet respondents No.1 and 2 have not done anything to abolish the unequal and discriminatory system. Respondent No. 3 who has been running the institution has not despite the knowledge of unequal education system, recommended to the concerned body to repeal or amend the discriminatory system. The terms and conditions contained in the admission form of Ved Vidyshram prepared by respondents No. 4 and No.5 are against the norms and values of Hindu religion, the right to equality- Article 11, sections 1, 2, 3 and 4, Articles 18 and 19 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1996, the Convention on Political rights of Women 1952, Convention on Child Rights, 1989, Convention on Elimination of All Kinds of Discrimination against women, 1979, ICCPR 1966, and ICESCR, 1966. The writ petitioner, therefore, sought for the annulment of the said provisions through the order of Mandamus to provide equal opportunity to all for study according to the Gurukul tradition, irrespective of caste, creed, and gender and if necessary, for introducing a special program for the oppressed, disabled, poor and indigenous students for pursuing study in a proportionate manner by making an equitable legislation.

This court passed an order on 2063/2/21 in the name of the respondents asking them to reply within 15 days as to why the order sought by the petitioners need not be issued. It further directed to notify Nepal Government, Council of Ministers and also send a copy of the notice to the office for their knowledge. Likewise, the order also directed to provide a copy of the writ petition to Ved Vidyashram through the concerned District court asking the respondent to submit its rejoinder in person or through its representative within the prescribed time limit. Finally, the court instructed to present the case file before the Bench receipt of the rejoinders or after expiry of the prescribed time limit.

In the written reply submitted by the Office of the Prime Minister and the Council of Ministers, praying for the annulment of the writ petition, it was contended that the petitioner had failed to clearly point out which type of right of the petitioner

had been infringed and by which act of the respondent and therefore he had framed the respondent as a defendant without any ground or reason.

Responding to the writ petition, the Ministry of Education stated that the activities were being conducted with the limited resources of Nepal Government. It further stated that no individual was discriminated against in regard to study of the Sanskrit language on the basis of religion, gender race or any other reasons. The petitioner did not have locus standi to file writ petition. As the petitioner was not able to show how he had concern with the issue, so in such a situation the petitioner did not have locus standi to file writ petition based on the concept of “public right or public interest”. Therefore, in the absence of locus standi, the writ petition should be quashed.

Responding to the writ petition respondent Nepal Ved Vidyashram, Bankali, contended that Nepal Ved Vidyashram was neither established nor run by law, or run by the state. In fact, it was established and run on traditional basis. Promoting the study of the Vedas and promoting Vedic rituals and good conduct Ved Vidyashram was established by the Guthi Sansthan through a Royal decree of late King Mahendra. As the school imparts education related to vedic rituals concerned with the livelihood of a specific class. Thus, it is not established by law rather established in the form of Guthi having its own constitution, which clearly states that individuals aged between 10 and 15 years, who are Upanit Brahmins, will only have the privilege to attend the institution. In such a situation, the Ved Vidyashram is not run under the law of the state but established in the form of Guthi. The institution cannot go against its objective nor can it be compelled to impart education against its objective. Since the institution has not been established under the law of the state or by the state, the petition submitted based on the claim discriminatory act of the state cannot be issued. The petitioner has failed to point the specific law under which the Vidyashram has been established or operated. Nor has he proved that the law was discriminatory. Because the Ved Vidyashram was not established by law rather operated in accordance with its statute and tradition, the writ petition submitted with the plea to conduct the institution against its statute and tradition was baseless and deserved to be dismissed.

Rejecting to the writ petition, Nepal Ved Vidyashram Sanskrit High School stated that to fill up the form as per its rule was against Article 1, Sections 1,2,3,4, and Articles 18 and 19 of the Constitution of the kingdom of Nepal, 2047 and also against the recognized values of Hindu religion. However, Article 11 of the Constitution prescribed that all citizens are equal before law, likewise Article 11, Section(2) clearly stated that the state will not discriminate on the ground of religion, class, gender, race, beliefs or on ground on any of these issues. The above mentioned provision shall be effective against the organizations which are under the control of or controlled by the state. Nevertheless, it is not effective in case, it is established for a specific group, Trust or institution. Similarly, Article 19(1) of the Constitution of the Kingdom of Nepal, 2047, article 19(1) guarantees the right to religion and the freedom to follow and practise one’s religion. It has clearly prescribed every individual the right to follow and practice one’s religion maintaining dignity of the existing tradition that has been practiced since long .In the same way, Article 19 Section (2) has guaranteed every religious community

the right to conduct and protect one's religious place and Trust in accordance with law, maintaining its freedom of existence.

On this basis, Nepal Veda vidyashram has got the right to impart education of Hindu rituals as well as professional education of specific class. The Nepal Veda Vidyashram protects the right of specific group to learn rituals. It has been established exclusively for the "Upadhya Brahmins" in accordance with the existing values of the specific community, whose expenses shall be borne by Guthi Sansthan. It has been especially established to achieve the objective that gives priority to the upanit Brahmins of 10 to 15 years of age. The school conducted under Trust has been a heritage of the Trust of "Upadhya Brahmin". Therefore, the claim of the petitioner to include also non-Brahmins in the Ved Vidyashram shall contravene the constitutional provisions of Articles 18, 19(1), and 19(2) of the Constitution of the kingdom of Nepal, 2047. If the claim of the petitioner was granted, it will cause disturbances to the traditional culture and values of the community. On this basis, the writ petition deserved to be quashed.

Responding on behalf of the Pashupati Development Area Fund, its Executive Director Shyam Shekhar Jha, contended that the Pashupati Area Development Fund was a legal institution. A legal person does things as conferred by law. In order to achieve the objective of Pashupati Area Development Fund Act, 2044, it is the right and duty to follow the prescribed procedural rules of the Fund. It is the objective of the Pashupati Development Area Fund to protect the ancient, historical religious and cultural objects and places having national importance as prescribed by the Act and to manage the performance of traditional worship of gods and goddesses. It is also an objective of the Fund to improve this place as a holy pilgrimage in a planned manner for the Hindus and other national and international tourists. It further contended that in the holy Pashupati Bankali area the Guthi institution with a view to producing Brahmin ritual performers started the present Ved Vidyashram by providing food and housing to 32 Brahmins since 2031. Nepal Ved Vidyashram running under the Guthi institution falls under the jurisdiction of Pashupati Area Development Fund. The worships is performed according to Hindu norms in the temples of Pashupati area. The rituals have been protected and maintained in accordance with the ancient tradition. The Pashupati Development Area Fund has realizing its obligation to preserve the area as an ancient pilgrimage and as per the agreement between Guthi institution and the Pashupati Development Area Fund the Ved Vidyashram has been running since 2056/4/1. And since then it has been producing competent ritual performers. Therefore, as not a single act of the respondent has violated any constitutional right of the petitioner; the writ petition must be quashed.

In the mean time the Dalit NGOs Federation filed a petition requesting the court to allow it to be also included as a party to the writ petition. It pleaded that among the petitioners Dalit NGOs federation has been running with the objective of uplifting and bringing socially oppressed, economically exploited, politically excluded and those who have remained dalit due to the categorization of labor in the main stream of National development. The dalit non-governmental organization is the federation of dalit NGOS. It not only works to eliminate the discrimination against dalits but also works for the

fundamental and constitutional rights, protection, and promotion and of human rights of the dalit. It has been providing legal assistance to the dalits for their resettlement. Among the petitioners, advocates Arjun Kumar Wagle, Gomati Sunar, Sambojan Limbu and Shyam Kumar Bishwokarma have been providing legal aid to the helpless, neglected and oppressed community. It is the institution that works to protect the rights and to eliminate the discrimination based on race with a view to establishing an equitable society based on equality. Thus, the writ petitioners have filed the petition seeking annulment of the discriminatory laws.

The petitioner contended that the terms and conditions laid down in the admission form meant for admission to the Ved Vidyashram of the respondent No.4 prohibited non-Brahmins as well as the individuals from other race, class, religion, gender or community from filling up the form. The terms and conditions prescribed in the admission form not only violated the law of the country but deprived a bigger section of the Hindus, natives from receiving the education of the world's first religious scripture. The provisions mentioned in the admission form of Ved Vidyashram were against the preamble and Sections 1, 2, 3 and 4 of Article 11 relating to the rights to equality of the constitution of Nepal, 2047 and the provisions of UDHR 1948. It has violated the legal provisions against race, gender, class, caste etc. So, to eliminate the discriminatory provisions and to secure equal opportunity of education to the individuals of different races and religions the petitioners deemed it necessary to be included as a party to the main petition of mandamus appeared to be of public interest.

It was further contended that the Nepal Ved Vidyashram stipulated within the Pashupati Development Area was a public Vidyashram. The Pashupati area itself was a public place that a school situated at a public place must be deemed as public in nature is without dispute. A strong basis of the School being public is the signboard posted at the gate and the public announcement posted for admission. It was not proper for such a School of public nature and character to lay down criteria for admission on the basis of caste and religion which smacked of superiority and inferiority such a discriminatory provision was against the preamble of the Constitution of the kingdom of Nepal, 2047, Article 11, Sections 1, 2, 3, and 4, UDHR, 1948 and international Convention on Elimination of All Forms of Discriminations, 1965.

In the preamble of the Constitution of the Kingdom of Nepal, 2047 it has been stated that inspired by the objective that all the Nepali people attain social, political and economic justice for long and in order to protect the human rights of every citizen, maintain brotherhood and unity among the Nepali people based on freedom and equality the cultural and educational rights have been guaranteed by Article 18. The directive principles are embodied in section 3 of article 25 and the state policies are embodied in Section 10 of Article 26. There are the provisions of UDHR, Article 4 of the International Convention on Elimination of All Forms of Racial Discriminations 1966- "States parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or

acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 56 of this Convention, inter alia”: As Nepal was a party to these Conventions, the provisions enshrined in the Convention were mandatory and acted as the law of the country as per Section 9 of the Treaty Act 2049. Since the terms and conditions mentioned in the admission form were discriminatory, as they were against the provisions of the UDHR, the petitioners prayed for making arrangements for getting education without any kind of racial, religious or lingual discrimination and discrimination based on gender or color and in accordance with the spirit of human rights, right to education and the Constitution of Nepal and spirit of the declaration of the Constituent Assembly.

In order to receive education or specialized education, the state and the state owned machinery may set minimal conditions, qualifications or requirements. While setting up the conditions, qualifications it should not be based on religion, color, gender and creed but on universal beliefs like law, citizen’s right, fairness, justice and aptitude. Likewise, as the principle laid down in the verdict given by the court in the writ petition *Mandamus- The Dalit NGOs Federation Vs Teendhara Pathshala Sanskrit Hostel* stated that irrespective of race, color, gender or language anyone could use the facilities of the hostel and the Supreme Court also issued directive to the respondents to make necessary law not impugning the provision on right to equality stipulated in Article 11, Section (2) of the Constitution of Nepal. Even in view of that precedent, it was improper on the part of the Vidyashram to impose restrictions on admission to education which is an inherent right and on the services/facilities provided by the Vidyashram based on religion, caste and color. It violated the right to education and was against the law, justice and Constitution and also and impractical. The accurate, comprehensive and just explanation made in that precedent is also a basis for this case. Therefore, the petitioners requested the Supreme Court to allow the writ petition also in light of that precedent laid down by the apex court.

Therefore, in order to protect Hindu religion, culture, tradition and to make it universal, it was important to include people from all castes and religions. But the terms and conditions which permit only a specific race to study in this school were against the provisions of some national and international human rights Declarations and Conventions, our Constitution and the principles laid down by the Supreme Court, in this regard. Therefore the impugned provision should be amended or repealed fulfilling the claim of the petitioner. Thus, as the provision in the admission form of the Vidyashram was against the provisions enshrined in the preamble Sections 1,2,3 and 4 of Article 11, Article 18 and Article 25(3) of the present Constitution of Nepal, Article 26(10) of UDHR, Declaration, 2063 of House of Representatives, Convention on the Elimination of All Forms of Racial Discriminations, 1965,, principles, norms and values of the Hindu religion and secularism, it must be repealed giving opportunity to all, irrespective of caste, creed and gender, to study the Vedas by also giving continuity to the traditional learning system making special arrangement for the disabled, oppressed, dalits and excluded.

As in the petition, *Mohan Sashanker Vs Nepal Government, Prime Minister and Council of Ministers*, interests of the Dalit NGO Federation were also involved, the apex court granted it permission to be included as a party to the proceedings of the petitioner as per Rule 42(2) of the Supreme Court Regulation 2049.

Appearing on behalf of the petitioner, the learned advocate Mohan Sashanker himself, learned advocates Satish Krishna Kharel, Hari Phuyal, Madhav Kumar Basnet, Chandra Kanta Gyawali and Kailashman Bishwakarma pleaded that the provisions of the admission form of Ved Vidyashram that allowed only Brahmins to fill up the form, restricting non-Brahmins to apply, were against the International Covenants that Nepal had ratified and against the right against untouchability and the right to equality as stipulated in the Constitution. Therefore, the learned advocates pleaded for repealing the discriminatory provisions and allowing students of all castes to apply for admission. Likewise, Learned Advocates, Harihar Dahal, Yuvraj Bhandari, appearing on behalf of Ved Vidyashram, and Advocate Kamal Bogati, on behalf of Pashupati Development Area Fund pleaded that the students studying in Ved Vidyashram were sponsored by several people to study the Vedas. Similarly, the body running the Ved Vidyashram was not a public institution. For that reason, extra-ordinary jurisdiction could not be invoked in the affairs of a private institution. So, they pleaded for quashing the writ petition.

Appearing on behalf of Nepal government Deputy Government Attorney Yubraj Subedi pleaded that the petitioner had failed to clearly state which type of his right had been infringed by which provision of law. He further argued that the right to religion could be enjoyed only in accordance with law and if the integrity of Nepal was at stake, necessary law could be made for its protection. He also contended that giving continuity to the practice that had been followed since time immemorial did not create any legal and constitutional error. In the same way he contended that the Government of Nepal had not shown any discrimination. Therefore, he pleaded that the writ should not to be issued against the Government of Nepal.

Upon hearing the pleas made by the learned advocates of both the parties and after studying, the case file, it was found that the admission form of Nepal Ved Vidyashram required students to be “Upadhya Brahmins” whose upanayan sanskar(sacred thread ceremony) should have been completed. The writ petitioner contended that the said provision was against the fundamental rights guaranteed by the Constitution of Nepal, 2047 and the rights guaranteed by the International Covenant which had been ratified by Nepal. The petitioner therefore, sought for the annulment of the said provision and issuance of an order of Mandamus to the respondents asking them to make provisions enabling students belonging to other castes, too, to apply for admission.

The rejoinders presented by the respondents stated that the concern of the writ petitioner in the present dispute was not clear. For that reason, the petitioner did not have ‘locus standi’. Also, the Nepal Veda Vidyashram was not established or run under any law of Nepal. It was not run by the State either. The Veda Vidhyashram had been established by Guthi Sansthan through royal decree of late King Mahendra with a view to Vedic rituals and good conduct. It had not been established by law rather as

a Trust. It clearly stated that that privilege was provided to the Upadhyaya Brahmins of 10 to 15 years of age. A school could not be run contrary to its objective as it was not run or established by law. So the writ petition could not be issued on the ground of discrimination made by the states. It was purely run as a Trust. It was not clear which type of the right of the petitioner had been infringed by which provision of law. Article 11 of the then Constitution of Nepal, 2047 prescribed that no discrimination shall be made among the citizen on the ground of religion, color, sex, race, and beliefs. But that constitutional prohibition was applicable to the organizations run or managed by the State. The above mentioned provision was not applicable to the organization or Trust established exclusively for a specific race. Similarly, Article 19(1) of the Constitution of the Kingdom of Nepal, 2047, guaranteed the right to religion and the right to freedom to follow and practise one's religion. It clearly prescribed every individual the right to follow and practise his religion maintaining dignity of the existing tradition that had been practised since long. In the same way, Article 19, section (2) guaranteed every religious community the right to conduct and protect its religious places and Trusts. Thus, the Guthi Sansthan had been established exclusively for the Upadhyaya Brahmins honoring the existing dignity of their community and bearing the expenses therein. As the Vidyashram was the heritage of the Upadhyaya Brahmins the petition asking for entry of other communities in the institution was contrary to Articles 18, 19(1) and (2) of the Constitution of the kingdom Nepal, 2047. Therefore, the writ petition must be rejected.

Upon the study of the writ petition, the written replies of the respondents and the arguments of the learned advocates, the bench held that the decision should be rendered on the following issues:

- a) Did the petitioner have locus standi?
- b) Was Nepal Ved Vidyashram a public institution?
- c) Was the provision of the institution against the right to equality guaranteed by the Constitution?
- d) *Should the order be issued as claimed by the petitioner?*

In regard to first issue, there was no dispute about the fact that the petitioner was a Nepali national. The Petitioner had lodged the petition under 88(2) of the Constitution of the Kingdom of Nepal, 2047. The Constitution of the Kingdom Nepal, 2047 has been replaced by the Interim Constitution of Nepal, 2063. Article 107(2) of the Interim Constitution has got a similar jurisdiction of writ petition. Therefore, the petition was acceptable under Article 107(2) of the Constitution of the Kingdom of Nepal, 2047. Under Article 88(2) of the Constitution of the Kingdom of Nepal, 2047, the Supreme Court has a necessary or appropriate order for the enforcement of the fundamental rights granted by the Constitution or for the enforcement of any legal right for which there is no provision for any remedy or the remedy is inadequate or ineffective or for the resolution of any constitutional or legal matter involving a dispute of public interest or concern. The claim made by the petitioner show that the terms and conditions in the admission form of Nepal Ved Vidyashram permitted Upadhyaya Brahmins to fill up the form for admission excluding non-Brahmins which seemed to be discriminatory

depriving non-Brahmins of the opportunity to attend the institution. Because the writ petition had been submitted for the annulment of the discriminatory provisions present in the admission form, the petitioner being a Nepali national had the locus standi to enter the court.

In regard to the second issue, whether or not Nepal Veda Vidyashram was a public institution, the institution had been established as per the royal order of the then late King Mahendra by the Guthi Sansthan based on the regulation of Trust. Besides, the then His majesty's government had provided financial support on the understanding that the Guthi Sansthan will later be bearing the expenses on its own. The written reply of the Ved Vidyashram, its objective and regulation stated that Ved Vidyashram was established on 2026/10/6. Since Kartik 22, 2031 B.S the birthday of the then late Queen Aishwarya, students in the Ved Vidyashram were provided food and the School was started with the name of Nepal Ved Vidyashram. This showed that the institution had been established not as a private institution; it had received financial support directly or indirectly from the state. Since 2031 the Guthi Sansthan had been running the Ved Vidyashram. As the Ved Vidyashram was located within the Pashupati Development Area, later, as per the understanding between the Pashupati Area Development Fund (PADF) and the Guthi Sansthan dated 2056/4/1, Pashupati Area Development Fund had been running Vidyashram since then.

As Nepal Ved Vidyashram had been running under the aegis of the Pashupati Development Fund and was providing education about the Vedas and the Hindu rituals and because the Pashupati Area Development Fund (PADF) had been established by the Act of the state, these institutions were working as the agents of the state and, therefore the Ved Vidyashram came under the comprehensive definition of public institution. The Nepal Ved Vidyashram had been running under the expense made by of public body. Also the service it provided was also of public in nature. Thus, it was not proper to say that Nepal Ved Vidyashram was not a public institution.

Now in regard to the third issue, it is to be considered whether or not the terms and conditions expressed in the admission form allowing only the Upadhyaya Brahmins to apply for admission were against the right to equality guaranteed by the Constitution. An analysis of the impugned provision permitting the candidates belonging to a particular class to get admission in that School and excluding others belonging to other castes or classes from getting admitted to that school showed that such a provision, in the ultimate analysis, amounted to imposing restrictions on the people of other castes to get education about the Hindu rituals. Any type of acts aimed at distinction, prohibition, exclusion or restriction which resulted in restriction or denial of the rights of the people must be considered as discrimination among the individuals.

Such type of activities fell under the orbit of discrimination according to the definition of the term discrimination as incorporated in the international human rights Conventions and the principle propounded by the Supreme Court in the law suits of *Lili Thapa Vs Prime Minister and Council of Minister (N.K.P 2062, NO.9 Pg1054, Decision No.7588)* *Reena Bajracharya Vs Royal Nepal Airlines (NKP 2057,*

No 5, Decision No. 6898,, pg 376), Advocate Meera Dhungana Vs. Cabinet Secretariat (NKP 2061 No 4, Decision No. 7357, pg 37).

Article 1 of CEDAW defines discrimination as follows: “For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

This court has already given recognition to the above mentioned interpretation in decisions of various law suits. Apart from that, the education delivered to individuals of specific caste or class by an institution bearing the expenses from public fund and denying the service to the common people who should get access on a competitive basis and, in case of the backward classes granting them special concessions, and allowing the monopoly of a special class over education or State services or any thought or attempt to give continuity to such traditional control of such a class in a direct or indirect way seemed to be a discriminatory provision or act.

As regards the plea made by the respondents that the education given by that School should not be taken in the wider sense of Sanskrit education as it was basically related to the study about the Hindu rituals, the programme of that school could not be viewed by isolating it from the Sanskrit language and its education as the language of institution was Sanskrit. Because the medium of education given by the respondent was Sanskrit it could not be treated as unrelated to other types of education. Also, the importance and effect of the purpose of imparting education cannot be minimized. In spite of the fact that the education given by that School was related to the Hindu rituals, it was valuable for the Hindus and the students of Sanskrit from the viewpoints of both knowledge and profession.

In the submitted petition, the management of Sanskrit education should be considered in a wider sense. It should not be viewed only in the limited context of ritual performance. Most importantly first of all, the relation between fundamental rights and Sanskrit education should be taken into account.

It was necessary for an institution like Ved Vidyashram that delivered the Sanskrit education to contribute to the society by spreading the light of education. The Sanskrit language was considered to be a representative of the store of eastern culture and knowledge. Therefore, it was even more essential to make Sanskrit language reachable to all. Doing so shall preserve the dignity and utility of the Sanskrit language. A language or knowledge gains its importance on the basis of how liberally and practically its benefits have been disseminated. The Sanskrit language is well known as a treasurer of Asian knowledge and dignity. Depriving huge number of non-Brahmins of the opportunity to acquire the knowledge of Sanskrit language which will affect the life style and living standard as the people other than Brahmins will not be able to contribute to administration, economy and various aspects of the state mechanism. Eventually,

such discriminatory policies of the government or any institution will have long term negative impact on the nation or the region.

The Sanskrit language was important not only for the Nepali people but also for the human race as well. The education of Sanskrit should not be misconstrued as being limited to some elite group. This education is meant for the people. It is also an instrument to preserve the human civilization and also a source of providing, material and spiritual knowledge of life and universe. Every human wanted to make a move from ignorance to knowledge and from sadness to happiness. In such circumstances no education, especially Sanskrit education, should be discriminatory. There was a saying which reads as such: “Whosoever gets the sun light, is said to have received the warmth and brightness, so is the education”: The proposition of one caste exercising the right and the other caste being denied such right was unimaginable. The requirement of belonging to a particular caste for learning Sanskrit language was discriminatory in itself. A human receives education, not a caste. The Sanskrit language could not gain its dignity by value delivering its education to Brahmins and tended to loose it by delivering it to non- Brahmins. There was no constitutional or legal basis for making the Sanskrit education inaccessible by imposing restrictions regarding caste, clan or tradition. The philosophy of Sanskrit language itself did not give recognition to such an outlook. The learning Sanskrit language will gain importance, if it was directed towards removing poverty, illiteracy, disease, hunger, grief and discrimination and helped in making a responsible citizen. If one sect was capable of chanting mantras and the other sect was denied even the right to hear such mantras, such a discriminatory educational system shall only create inequality in the society. Such education could not be of Sanskrit literature. The Sanskrit language should be made easily available to all.

Mentioning the rights to equality; right to education, freedom and justice in the Constitution was not meant to curtail or violate the constitutional rights. Rather it should be perceived within the wider context of rule of law, justice, inclusiveness and social justice.

Inclusiveness and social justice in such circumstances the Sanskrit education delivered within the Vidyashram area could be taken only as a symbolic issue. The state should prioritize Sanskrit language and guarantee easy access to its education and the standard of the institution and be ready to remove all kinds of discrimination. In order to transform from traditional and discriminatory society into a new society it was necessary to make a complete evaluation into the philosophy of transformation of the State with a separate strategy. For this, state should introduce and implement a new policy related to Sanskrit education.

Though Sanskrit language was conventionally focused on the spiritual sector only, it was now time to develop that language as a medium of livelihood and development. Among the fundamental rights placed in Constitution the educational and cultural rights have got a special place. In Nepal Sanskrit was considered as a treasure of a system apart from being knowledge itself. Brahmins had easy access to

Sanskrit language whereas others did not. Hence, there was a trend to describe Sanskrit language as the language of a limited section. But the knowledge, skill and tradition treasured in Sanskrit did not have room for exclusion or denial. Sanskrit should be the language of the country irrespective of class, gender, and race. It was the foundation of cultural system of various clans. Denial of Sanskrit education or having no access to it violated the rights of education, culture, equality, freedom and social justice- embodied in various Articles of the Constitution.

In the catalogue of fundamental rights the educational and cultural right occupied a unique position. And its effective enforcement shall have its repercussion also on other fundamental rights. In among the rights listed as basic rights and essential for human life, the right to education was enjoyed at the appropriate level. The ground for meaningful enjoyment of the right to life could be created covering various aspects like-employment, lifestyle, health, political and cultural interaction. That is why right to life shall also contribute to the enjoyment of other rights in a distinct and collective manner. However, excluding marginalized or underprivileged class from the high quality Sanskrit language and its educational system will deprive them of the above mentioned rights and possibilities. The description of right to equality in the Constitution alone did not have any meaning. Its meaning depended on the meaningful use.

The Sanskrit language should be directed towards the traditionally neglected or excluded classes who should be brought under the educational system. However, the access to Sanskrit language had been denied giving continuity to the existing inequality. No one should be involved in creating such a greater distance of inequality. An individual should contribute in spreading education in all corners of the country. In accordance with the Constitution, the concept of right to equality should be prioritized to those who had been deprived of the opportunity and were in greater need. On evaluating facts, a program should be introduced giving access to the deprived and not giving continuity to the discriminatory traditional practices. The Sanskrit language not only contained Scriptural knowledge but also included new thoughts, perspective, creativity and possibilities. The Sanskrit language was necessary today as it competed with the educational system abroad and addressed the challenges of threat to the extinction of our national and social identity brought about such alien educational system. The petition should be considered in the light of the on the legal rights and its practical justification.

The legal basis of the petitioner's claim seemed to the provision of right to equality guaranteed by the Constitution of the Kingdom of Nepal, 2047, and the Interim Constitution, 2063. According to the provision of those Constitutions all the citizens were equal before the law. No one shall be deprived of equal protection of law. No one shall be discriminated by law irrespective of religion, class, gender, race and belief. Article 14 of the Interim Constitution of 2063 contained the provision of the right against discrimination. Not only this, it also prohibited but also an individual to discriminate in the name of untouchability.

Nepal is a multi-linguistic and diverse society where people speak more than one language. Nepal has richness in its ethnic culture, various languages where people share a bond of togetherness. In such a country, one section was deprived of attending school due to the traditional practices which were against the right guaranteed by the Constitution of Nepal. Thus, the terms and conditions expressed in the admission form of Ved Vidyashram were against Article 11 of the Constitution of the Kingdom of Nepal 2047 and also Article 12 of the Interim Constitution, 2063.

In regard to the fourth issue- on, whether or not to issue order as claimed by the petitioner it appeared from the written reply presented by the respondents that Vidhyashram had been established and run by the Guthi Sansthan as per a royal decree of late king Mahendra and after an agreement between the Guthi Sansthan and Pashupati Area Development Fund in 2056/4/1 it had been run by Pashupati Area Development Fund.

The terms and conditions expressed in the admission form denied the entry of non-Brahmins in the School. A public institution that was established under law cannot deny to serve any class of people discriminating on the basis of caste. The Nepal Ved Vidyashram provided education of rituals. The products of the institution had become capable of imparting the knowledge and skills they gained throughout the country as well as using it as a source of income. The petitioner who was also a Hindu had a problem in performing rituals due to the lack of the relevant knowledge and training and was also deprived of the opportunity of profitable employment. No law of the country granted an exclusive right to the Brahmins only to attend such schools/ institutions giving education on ritualistic priesthood. Discrimination on the basis of race was against the right against untouchability and racial discrimination granted by Article 14, the right to religion granted by Article 23, the right to social justice granted by Article 21 and the right to equality guaranteed by Article 13 of the interim Constitution of 2063.

A legal or a public institution that delivered education or any other services with the support of the state must make its services easily available to all. The idea of establishing separate schools or service institutions on the basis of caste promoted discrimination that would eventually lead to disintegration of the social structure instead of its integration. It was, therefore, not proper to make a sacred educational institution like the Vidyashram run by the Pashupati Area Development Fund the medium or centre of such wrong and discriminatory activities. An order of Mandamus is hereby issued- in the name of Pashupati Area Development Fund and Ved Vidyashram not to make any discrimination and to follow to follow the principle of equality in granting admission to the educational programs conducted by the Ved Vidyashram on the basis of qualifications.

In view the significance of the educational knowledge in the Hindu religion imparted at the Ved Vidyashram and the number of students interested in acquiring such knowledge or study a directive order is hereby issued in the name of Pashupati Area Development Fund and the Ministry of Education to manage for necessary

resources and also to make all the necessary arrangements for expansion and institutionalization of its services by formulating specific policies and rules addressing the interests of the teachers working there and the students studying there. Let the respondents be informed of order, and let the case file be hand over to the Archive Section.

S/d
Kalyan Shrestha
Justice

I concur with the above mentioned opinion.

S/d
Awadesh Kumar Yadav
Justice

Bench Officer- Bimal Poudel

Computer Typist- Dhan Bahadur Gurung

Dated: 3rd of the month of Ashad of the year 2066.