

Judgment Date: 2074/12/07 **ŷ ŷ** 7017

Opponent: Government of Nepal, Office of the Prime Minister and Council of Ministers, Sinha Darbar,
Kathmandu, 100th Floor

The character of a democratic system of governance is to act according to popular consensus or public will and elections are a way for citizens to express their will. In a democracy, citizens express their views on basic questions such as who to choose as representatives and what kind of laws and policies to create, so the right to vote is interdependently linked to the freedom of thought and expression.

(Chapter No. 2)

Obstructing the constitutional rights of the citizens who are entitled to participate in the elections and vote in any case cannot be considered according to the law.

(Chapter No. 4)

The fact that the Constitution of Nepal provides citizens with the right to vote in the same level of elections as a constitutional right should not be underestimated from any point of view. Under the right to vote given by the constitution, "the right to the opportunity to vote" is also inherent. If the constitution provides the right to vote but the state does not create the opportunity to vote, then the right provided by the constitution will be meaningless and pointless. In the case where the constitution provides equal opportunity to every citizen to participate in voting, that opportunity will be provided to the citizens in the country, but not providing that opportunity to the citizens who are outside the country during foreign employment would be contrary to the right of equality.

(Chapter No. 5)

The state will benefit from the contribution made to the economy by the remittances of the citizens outside the country, but depriving those citizens of the right to vote because they are outside the country does not seem to be appropriate even from the point of view of justice.

Due to the fact that the economy of the state has not been able to create employment opportunities, there is a risk that the citizens who have migrated to foreign countries due to employment reasons may also be deprived of the right to vote. On the one hand, elections conducted by excluding a large part of the country's population violate the voting rights of those citizens, and on the other hand, the results of such elections cannot fully reflect the real wishes and feelings of the citizens.

Depriving citizens who are employed abroad of the right to vote may raise questions about the fairness and sanctity of the election itself. There can be no dispute about the fact that the elections conducted by the state should be clean and fair, but the elections conducted by diverting a large part of the population from the opportunity to cast their votes cannot be considered as fully approved by the people.

The right to vote in the election is a constitutional right of the citizen and every citizen should be given equal opportunity to participate in the election without discrimination and it is the responsibility of the state to adopt any other necessary measures including legal, administrative and reflecting the real will and feelings of all citizens in the election under the democratic system. In order to make the elections widely participatory, it is the responsibility of the state to make proper arrangements to provide voting rights to Nepali citizens abroad in connection with foreign employment.

(Chapter No. 7)

On behalf of the Writ Petitioner: Learned Advocates Mr. Hari Phuyal, Mr. Alok Pokhrel, Mr. Barun Ghimire, Mr. Anurag Devkota and Mr. Kedar Dahal

For the Opponent: Learned Deputy Advocate Mr. Hariprasad Regmi

Adopted example :

NCAP 2070, issue 10, p.1288

Related Laws:

Constitution of Nepal

Foreign Employment Act, 2064

International Covenant on Civil and Political Rights, 1966

order

Justice Sapna Pradhan Mall: According to Article 46 and 133(2) of the Constitution of Nepal

Brief facts and order of the present writ petition filed in this court

It is as follows:

Dismissal of Writ Petition

Since the establishment of the Law and Policy Rules Forum for Social Justice, the state has been drawing attention to the obligations that Nepal has to fulfill under international human rights law, taking initiatives to implement the fundamental rights granted by the Constitution of Nepali citizens, and also holding responsible bodies accountable for other public rights and concerns, and promoting legal governance in the country. It is a non-profit non-governmental organization whose main goal is to contribute to the establishment. As the executive director of this organization, I have been working as the director of the research department in Kathmandu School of Law as well as being a writ petitioner legal practitioner. Nepali citizens working abroad are deprived of their constitutional right to vote

As there is and I and my organization have a meaningful relationship and substantial interest in the said question, I have appeared before the honorable court with this petition in accordance with Article 46 and 133(2)(3) of the Constitution of Nepal.

For a democratic country, periodical elections and the meaningful participation of citizens in those elections are inevitable. The constitution of Nepal also mentions periodical elections and minor suffrage in the preamble. In Article 17(2)(a) of the Constitution, "Every citizen shall have freedom of opinion and expression, in Article 18(1) all citizens shall be equal before the law and no one shall be equal before the law." shall not be deprived of protection." It has been arranged. Similarly, Article 51(j)(5) provides for the regulation and management of foreign employment in order to make foreign employment free from exploitation, safe and organized and to guarantee the employment and rights of workers. Similarly, Article 84(5) states that "every Nepali citizen who has completed eighteen years of age shall have the right to vote in any constituency in accordance with the federal law", while Article 176(5) states that every Nepali citizen who has completed eighteen years of age residing within the territory of the province shall have the right to vote in accordance with the law. There is a provision that one will have the right to vote in one of the constituencies. In addition to this, Article 222(5) provides that a person whose name is included in the voter list of a rural municipality who has completed eighteen years of age and Article 223(5) a person whose name is included in the voter list of a municipality who has completed eighteen years of age shall have the right to vote in accordance with federal law.

In terms of the implementation of the Constitution of Nepal (2072), the government of Nepal has the obligation to complete three important elections, and currently, fifty million Nepali citizens are outside Nepal. According to the statistics of the Election Commission, the total number of voters is 1,40,54,482, according to the statistics published by the Government of Nepal in 2016. During 2015, a total of 27,23,587 people obtained work permits

seems Even considering this data as a base, it seems that 20 percent of the total number of voters are outside the country due to foreign employment. This data does not include workers who went without a work permit, citizens who went abroad on other pretexts and workers who migrated to India. If these facts are to be counted, it is more than 25 percent of the total number of voters or more than 3.5 million

seems However, since there is no arrangement for the citizens who are abroad for foreign employment to vote from outside Nepal, it seems that more than 3.5 million Nepali citizens who are currently migrating for foreign employment are deprived of the right to vote. Currently, more than 114 countries in the world have arranged for their citizens to vote even from outside their country. Voting can be done from outside the country
The arrangements made by 16 countries other than the Philippines have also been submitted with this application.

The right to choose one's representative in any periodical election is a right to be guaranteed under the right to personal freedom. However, when citizens who are abroad are deprived of the right to vote during foreign employment, they are deprived of the right to personal freedom guaranteed by Article 17(1) of the Constitution, while the right to freedom of expression provided by Article 2(a) and the right to freedom of expression provided by Article 18(1) Even the provision of not being deprived of equal protection has been violated and the constitutional rights derived from other articles have also been violated. Therefore, in the absence of other remedies, I request that the necessary injunctions or reliefs be issued with the mandate to make the following arrangements in the name of the opponents by using the extraordinary jurisdiction vested in this court in accordance with Article 133(2) (3) of the Constitution.

(1) In order to ensure the voting rights of the workers in the destination country during foreign employment, they can vote in the elections of all levels (local legislature, state legislature and representative assembly) from outside the country (External Voting/out of country Voting) Let's issue a directive order to make legal arrangements immediately.

(2) To vote in all levels of elections from outside the country (External Voting) by arranging the infrastructure with the necessary resources related to the elections and also to provide an opportunity to those citizens to participate in the voting. Also, Behora's writ petition that the presented petition should be given priority in accordance with Rule 63(3)(6) of the Supreme Court Rules, 2049.

Show cause order passed by this Court

What happened to it? Why should the writ of mandamus not be issued according to the request of the petitioner? If there are reasonable grounds and proofs that the order should not be issued, the same shall be submitted within 15 days from the date of receipt of the opening notice through the Office of the Attorney General, along with a copy of the order and petition. . In addition, the order of this court dated 21.1.2074 that priority has been given in accordance with Rule 63(3) (Ch5) of the Supreme Court Rules, 2049, as the matter of citizens' right to vote is attached to the petition.

Written reply from the Ministry of Opposition Law, Justice and Parliamentary Affairs

Article 84, 176, 222 and 223 of the Constitution of Nepal states that the person who has reached the age of eighteen and whose name is included in the electoral roll has the right to vote according to the law for various purposes. It is clear. As far as the issue of creating a law for Nepali citizens who are in the destination country during foreign employment to be able to participate in the election and vote from the destination country, the challenges that may arise from arranging voting outside Nepal, election security arrangements, election management, election monitoring, the number of polling stations abroad. Matters such as determination, election expenses and access to Nepali citizens who are employed abroad should also be taken into consideration. Not all developed countries have been able to arrange Out of Country voting. In addition, the issue of Out of Country Voting is not a matter to be addressed by the nation of Nepal alone, but should be resolved diplomatically in coordination with foreign countries. On the basis of resources, means and appropriateness, the government of Nepal is considering making necessary arrangements so that the voters who are abroad can cast their votes from the same place. Let the writ petition be dismissed.

Written Answer to the Opposition Legislature Parliament

It is not clear in the writ petition that what kind of constitutional and legal rights and rights of the writ petitioner and what kind of violation of the constitution and laws of Nepal have been violated and the fundamental rights of the citizens have been violated by the action of the legislative parliament. The government has to make laws and implement the constitution and laws keeping in mind various issues such as its financial resources and the state's economic situation. Some of the developed world

In the perspective of the fact that even the countries are not able to provide the citizens who are scattered abroad with the facility to vote from the country they are in, the issue raised by the writ petitioner cannot be considered relevant for a country like ours which is not financially capable. Similarly, it is not a situation where the government has made foreign employment mandatory and inevitable according to the law. In addition, there is no legal provision and the government does not have such a policy that people who go for foreign employment are not allowed to participate in elections or vote. A person who intends to participate in elections or voting can participate after returning from foreign employment and is not prohibited by any law. As far as the matter raised in the writ petition is concerned, the government can make necessary laws and other provisions whenever it deems it necessary, and since there is no basis and reason to make the legislature parliament an opponent, no order should be issued as requested in the writ petition, the writ petition should be dismissed as it is part of the dismissal.

Opposition Home Ministry's written reply

The Ministry of Home Affairs has always been sensitive to the fact that ordinary citizens should be able to easily and simply enjoy the constitutional and fundamental rights provided by the Constitution of Nepal. The Ministry of Home Affairs is positive that Nepalese citizens who are outside the country should be able to exercise their right to vote. A large amount of resources and means are needed to arrange voting for a large number of Nepali citizens scattered in different countries, as well as managerial skills are also expected. With the availability of necessary resources and means, the Ministry will take necessary steps to ensure the voting rights of Nepali citizens who are outside the country to vote easily. The writ petitioner has violated the fundamental rights of Nepali citizens by the actions of this ministry in the writ petition

It does not seem to be able to mention the objective basis and reason for the fact that it happened. In the present context, the writ petition of the opponent is in vain, in the case of this ministry, the writ petition should be dismissed.

Opposition Electoral Commission's written reply

The Election Commission has been given the responsibility of conducting, supervising, directing and controlling the elections and preparing the voter list for that in accordance with the constitution and prevailing laws. As mentioned by the petitioner in the application, regarding the arrangement of polling centers in Nepalese embassies and consulates abroad for Nepali citizens who have obtained Nepali citizenship who have settled abroad for various purposes such as employment, education, etc. However, the writ petition is dismissed. Matters such as voter list collection, eligibility of voters, voting etc. are mentioned in the related Act and since the task of making the Act is the Legislature, it is not possible to make the Election Commission an opponent in this matter. The body that cannot be made an opponent should be dismissed as the writ petition filed as an opponent to this commission as well.

Opposition Foreign Ministry's written reply

The Ministry of Nepal has been fulfilling the obligations and responsibilities of implementing the matters related to the Ministry under the scope of work assigned by the Government of Nepal and the policy decisions authorized by the Government of Nepal and the prevailing legal system. Although the Ministry of Foreign Affairs looks after the records of Nepali citizens abroad and the protection of their rights and interests and issues related to non-resident Nepalis,

The subject of legally ensuring the voting rights of the Nepalis and taking policy decisions for the voting arrangements is not within the jurisdiction of this Ministry and the agencies under it. Therefore, the matters related to the claim of the petitioner do not appear to be within the jurisdiction of this Ministry. Therefore, the writ petition filed as an opponent to this Ministry as well, should be dismissed.

Written by the opposition Nepal Government, Office of the Prime Minister and Council of Ministers
answer

In terms of creating an environment for citizens to participate in the governance system through their chosen representatives through elections, although there is no theoretical objection to the issue of allowing citizens living abroad to participate in elections, the Nepalese government, which has executive powers as long as the country's resources and resources are available, will make policy decisions and make administrative arrangements and legislate the law. Since it is a matter of jurisdiction (Legislative competence), there is no need to issue an order as per the request of the petitioner. In addition, the fact that the petitioner is living abroad due to employment or other reasons and that he is deprived of the right to vote is not mentioned anywhere in the petition, and since there is no meaningful connection with the contention in the petition, the petition should be dismissed for lack of merit.

Regarding the debate of legal professionals

In the present writ petition submitted to this bench for the decision on the addition to the pesi list according to the rules, the learned advocates Mr. Hari Phuyal, Mr. Alok Pokhrel, Mr. Barun Ghimire, Mr. Anurag Devkota and Mr. Kedar Dahal, appearing on behalf of the petitioner, stated that periodical elections for democracy and the meaningful participation of citizens in those elections are indispensable issues. If so, participate in voting

The right to receive is a constitutional right of every citizen. It is the responsibility of the government of Nepal to make arrangements for everyone to enjoy this right provided by the constitution in an equal way, but due to the lack of provision for voting from outside the country, millions of Nepalis who are abroad during foreign employment are deprived of constitutional rights such as voting. In various countries of the world, it is possible to participate in voting from outside the country, so it is possible to do so in Nepal, but because the opposition did not make the necessary arrangements in this regard, millions of Nepali citizens were deprived of their basic rights such as voting. He argued that it should be reconciled.

Likewise, the learned Deputy Attorney Mr. Hariprasad Regmi, present on behalf of the opposition, said that the Government of Nepal is sensitive to the fact that ordinary citizens should be able to easily and simply enjoy the right to vote provided by the Constitution. In order to make arrangements for voting from that country, Nepali citizens who are in the destination country for foreign employment must also take into consideration issues such as election security arrangements, election expenses, election monitoring, determination of the number of polling stations, election expenses, etc. When all the developed countries have not been able to make this kind of arrangement, it is not a matter that can be addressed by the nation of Nepal alone. Based on resources and appropriateness, the government of Nepal is considering making necessary arrangements so that the voters who are abroad can cast their votes from the same place. He argued that the writ petition should be dismissed.

It was seen that the following questions have to be decided in the present writ petition in which the above mentioned facts and arguments are mentioned.

1. What kind of right is the right of a citizen to vote?

2. Should citizens who are outside the country during foreign employment be given the opportunity to vote in elections from outside the country or not?
3. If the citizens who are outside the country during foreign employment should be given the opportunity to vote from outside the country, can it be practically implemented or not?
4. Should the order be issued as per the request of the petitioner or not?

Now, when considering what kind of right the right to vote is, what is the theoretical basis and justification of giving the right to vote to the citizen and what is the provision of national and international law in this regard, it seems relevant to discuss briefly.

2. Periodic elections and adult suffrage are basic conditions of any democratic system

yes In a democracy, citizens are sovereign and exercise their inherent sovereign rights through adult suffrage. Voting rights exercised by citizens in periodic elections is a powerful means of ensuring citizens' participation in governance. It is a citizen's right to participate in the governance process of the state, but since all citizens cannot participate in the government in the formulation of the state's policy, citizens participate in the governance process by choosing their representatives based on the one person one vote principle. In other words, the representatives chosen by the citizens through elections are the heirs of the citizens who gain legitimacy through the voting rights exercised by the citizens and participate in the governance process on behalf of the citizens by representing the wishes, feelings and needs of the citizens. As all human beings are equal, citizens should be given the right to vote in a democratic system based on the philosophical belief that in order to rule over someone, the free consent of the governed must be obtained.

done The processes of government formation in a democratic system may differ from country to country, but the method of citizens participating in the government through direct and indirect voting is present in every democratic system. The character of a democratic system of government is to act according to public opinion or public will, and elections are a way for citizens to express their will. In a democracy, citizens express their opinions on basic questions such as who to choose as representatives and what kind of laws and policies to create, so the right to vote is interdependently linked to the freedom of thought and expression.

3. Looking at the arrangements made by various national and international laws regarding the right of citizens to vote, in the preamble of the Constitution of Nepal (2072), we are addressed as "the sovereign Nepali people", and the intention of the Nepali people to exercise their inherent sovereignty through "periodic elections" and "child suffrage" is expressed. Freedom of thought and expression is provided as a fundamental right. Similarly, Article 84(5) of the Constitution stipulates that every Nepali citizen who has completed eighteen years of age shall have the right to vote in any constituency according to federal law, while Article 176(5) provides that every Nepali citizen who has completed eighteen years of age residing within the territory of the province shall have the right to vote. According to the law, it has been provided that there will be a right to vote in any one constituency. In addition, in Article 225(5) it is provided that the person whose name is included in the voter list of the village municipality who has reached the age of eighteen years will have the right to vote as provided in the federal law. It is mentioned that the person will have the right to vote according to the federal law. In this way, the right of Nepalese citizens to participate in periodic elections at various levels through voting is clearly protected by the Constitution of Nepal (2072), so it seems that the right to vote is a constitutional right.

4. Likewise, various international laws also provide for the voting rights of citizens. Article 19 of the Universal Declaration of Human Rights, 1948 provides freedom of thought and expression to every person, while Article 21(3) states that the will of the people expressed through elections shall be the basis of the government's authority. Furthermore, Article 19(2) of the International Covenant on Civil and Political Rights, 1966 states that everyone shall have the right to freedom of expression, which includes the right to seek, receive and impart information and ideas of all kinds, while Article 25 states that every citizen shall have the right to express himself in matters of public interest. It is stated that they shall not be deprived of voting in clean periodical elections to ensure the free expression of their will by participating through their freely chosen representative and using adult suffrage. Thus, the right to vote in periodic elections is ensured as a human right by the Constitution of Nepal and various international laws

found Therefore, it cannot be considered lawful to obstruct the constitutional right of citizens to participate in elections and vote.

5. Now, let's think about the second question whether citizens who are outside the country during foreign employment should be given the opportunity to vote from outside the country or not. In the presented writ petition, the petitioner contended that although the constitution has provided citizens with the right to vote, because the state has not made necessary arrangements to provide voting opportunities to citizens who are employed abroad, millions of citizens who are abroad during foreign employment have been deprived of that opportunity. There is no provision to ensure the right of citizens to vote

not seen From which it was seen that even though the constitution has provided citizens with the right to vote, citizens who are abroad during foreign employment are deprived of the opportunity to vote. It should not be underestimated from any point of view that the constitution of Nepal provides the right of citizens to vote as a constitutional right that citizens have the right to vote in all three levels of elections. Under the right to vote given by the constitution, "the right to the opportunity to vote" is also inherent. If the constitution provides the right to vote but the state does not create the opportunity to vote, then the right provided by the constitution becomes meaningless and purposeless. In this regard, Vikas Lakai Khadka from this court also v. As long as the people are not allowed to express their will through votes, the fact that the right to vote is vested in the people or not has no theoretical significance and the will of the people is not reflected in the actual form in the election results. In order to make the voting rights of the people tangible and complete, they should also be given the opportunity to vote as per their wish. In this sense, it has also been explained that the right to vote should also be included under the right to vote. Likewise, Human Rights Committee's comment no. Article 11 of the 25 also states that the state should adopt effective measures to ensure that all citizens enjoy the right to vote. In this way, since the constitution provides the right to vote to the citizen, the citizen also has the right to get the opportunity to vote, and it is the responsibility of the state to provide the citizen with the opportunity to vote easily and without fear. Therefore, it is the duty of the state to provide an opportunity to all Nepali citizens to enjoy the right to vote without any kind of discrimination. Looking at the wording used in Article 84(5) of the Constitution of Nepal, there is a provision that every Nepali citizen who has completed eighteen years of age will have the right to vote in any constituency according to the federal law. According to the provisions of the Constitution

Every Nepalese citizen is given the right to vote. The provision has not limited that in order to exercise the right to vote, one must be a Nepali citizen living or residing in Nepali land, but certainly one must be a Nepali citizen to exercise the right to vote and that alone seems to be sufficient. In this way, when the constitution provides equal opportunity to every citizen to participate in voting, it seems that citizens in the country will be given that opportunity, but not providing that opportunity to citizens who are outside the country during foreign employment is also against the right of equality.

6. Whether or not to grant the right to vote in elections to citizens who are abroad during foreign employment is a matter related to citizens' participation in elections.

Elections held under a democratic system are not just a competitive game played by certain political parties or individuals for leadership. It is the process by which citizens exercise their inherent sovereign power and join the governance system. Therefore, it cannot be assumed that citizens' right to vote is respected only by holding elections at a certain time interval, and only by doing this, the state's obligations are not fulfilled. Since the election itself is a participatory process, the more citizens participate in the election, the more fair, legal and approved the election will be. Therefore, it should be tested whether the real purpose of holding elections has been fulfilled in relation to questions such as what is the level of participation of citizens in elections and whether all citizens have had the opportunity to participate in free and fair elections on the basis of equality without fear or not.

7. Due to the effects of globalization and the lack of employment opportunities within the country, a large part of the population is living abroad today. Likewise, a large number of citizens are abroad for education, employment, diplomatic service, business and family ties. Among these are jobs and opportunities

Due to the shortage, a large population is abroad for foreign employment. This is our social reality. According to the Labor Migration for Employment Status Report, 2015/17 published by the Ministry of Labour, Employment and Social Security, from 2008/09 to 2016/17, the Ministry has granted 35,09,633 labor permits. All the citizens who have gone in this way are people who have reached the age of 18 and have the right to vote according to the constitution. Even if the figures mentioned by the petitioner in the petition are taken as a basis, it seems that 20 percent of the total number of voters are migrating due to foreign employment. In this way, when the Nepali citizens who are migrating for foreign employment are deprived of the election process, a large part of the population will be deprived of their constitutional rights such as the right to vote. Going abroad for foreign employment is a product of necessity and compulsion to a greater extent than the desire or desire of the citizens, but the fact that remittances sent by citizens abroad for foreign employment have contributed significantly to the country's economy cannot be underestimated. In this way, the state will benefit from the contribution made by the remittances of citizens outside the country to the economy, but depriving those citizens of the right to vote because they are outside the country does not seem to be appropriate even from the point of view of justice. Due to the fact that the economy of the state has not been able to create employment opportunities, there is a risk that the citizens who have migrated to foreign countries due to employment reasons may also be deprived of the right to vote. On the one hand, elections conducted by keeping a large part of the country's population aside violates the voting rights of those citizens, while on the other hand, the results of such elections cannot fully reflect the real wishes and feelings of the citizens. In this way, depriving the citizens who are employed abroad of the right to vote, it seems that the fairness and sanctity of the election itself may be questioned. There can be no dispute about the fact that the elections conducted by the state should be clean and fair, but the elections conducted by alienating a large part of the population from the opportunity to cast their votes cannot be considered as fully approved by the people. In this regard the Supreme Court of India in PUCL and ANR Vs. Union of India and ANR

(2010)¹⁰ in the case of SCC 1, explaining that "Fair" means "Equal opportunity to all people", it seems that for the existence of democracy and good governance, people should be able to choose suitable candidates and for this, voters should also have the opportunity to choose. Similarly, Article 41 of the Convention on the Protection of Migrant Workers of 1990 stipulates that foreign workers and their families will have the right to vote and be elected in their country's elections as prescribed by law. It seems that the right to participate in the election is also recognized by international law. If any right is provided in the constitution, it is the responsibility of the state to arrange the necessary laws for the implementation of that right in practice and to create the conditions to enjoy that right by making other arrangements. In other words. In other words, it is determined by the constitution It is the responsibility of the state to respect the rights of citizens, to protect them and to make necessary arrangements for their compliance. In this regard, the United Nations Human Rights Committee in its comment no. 25, while explaining the responsibility of the state to ensure the right to vote to the citizens, it is mentioned that it is the responsibility of the state to ensure that all citizens who have the right to vote have exercised their right to vote, and for that, registration and other actions must be done. In this way, the responsibility of the state means that the right to vote in the election is a constitutional right of the citizen, and every citizen should be given equal opportunity to participate in the election without discrimination, and for that, it is the responsibility of the state to adopt any other necessary measures, including legal, administrative, and the real desire of all citizens in the election under the democratic system. And it is the responsibility of the state to make proper arrangements to provide the right to vote even to the Nepalese citizens who are abroad in connection with foreign employment in order to make the election widely public participation by reflecting the sentiments.

8. As discussed in the above cases, citizens who are outside the country during foreign employment should be given the opportunity to vote from outside the country, now when considering the third question that can be practically implemented or not, in the written answer submitted by the opponents, the challenge that may arise from the provision of voting outside Nepal, the security of the election. Matters like management, election management, approval of elections, determination of the number of polling stations abroad, election expenses and access to Nepali citizens working abroad should be taken into consideration and some countries of the world have not been able to provide voting facilities to citizens scattered abroad from the perspective of our economy. Roop seems to have insisted that the content raised in the writ petition cannot be considered relevant for a country that has not been able to do so. In this way, the opposition seems to have doubted that the task of providing voting opportunities to citizens abroad in connection with foreign employment can be practically implemented. If the order made by the court cannot be practically implemented, there is no justification for issuing such an order, so the court should seriously consider the possibility of its implementation before issuing any order in such matters of public concern. Therefore, in order to decide whether or not it is practical to implement the act of giving the citizens who are outside the country the opportunity to vote in the election during foreign employment, what kind of methods and procedures are in practice internationally to involve the citizens who are abroad for foreign employment in voting from their own country and this It seems that it would be desirable to consider the best practices of different countries in this regard.

9. It seems that there are mainly four methods in practice around the world to give voting opportunities to citizens who are abroad during foreign employment. The first method is to arrange a polling station in the country where the citizen is employed abroad to cast his vote

. The polling stations established in this way are usually placed in the embassy or consular office in that country. It seems that countries like Afghanistan, Argentina, Hungary, South Africa, etc. have given the opportunity to vote to citizens abroad through this process. Likewise, the second method is to provide voting opportunities to citizens living abroad through postal services. According to this method, citizens living abroad choose the candidate of their choice and the vote is sent to the home country through post. Countries like Canada, Norway, Mexico, and Switzerland seem to be using this method. The third method of giving citizens abroad the opportunity to vote is through their representatives (Proxy). In this method, a citizen living abroad appoints a representative in his country to vote on his behalf, and in his absence on the day of voting, the appointed representative votes according to his wishes. Mauritius, Nauru, Togo and other countries seem to practice this type of practice. Similarly, according to the fourth method, voting is done through electronic voting. Apart from this, it seems that in some countries citizens abroad are given the opportunity to vote by fax, while in some countries, more than one of the above-mentioned methods are used in a mixed manner.

10. In this way, various methods are in practice to provide voting opportunities to citizens abroad, and it is found that different countries have made legal arrangements to provide voting opportunities to citizens abroad. According to a report published by IDEA International, 115 countries in the world have granted voting rights to citizens living abroad. In 2003, the Philippines ensured the right to vote for citizens who are outside their country through The Overseas Absentee Voting Act. In Section 2 of the Act, it is the prime duty of the state to provide a system of honest and orderly overseas absentee voting that upholds the secrecy and sanctity of the ballot. Towards this end, the States ensures equal opportunity to all

Qualifies citizens of the Philippines abroad in the exercise of fundamental right. Thus, it is clearly stated in the Act that it is the responsibility of the state to give equal voting opportunities to Filipino citizens abroad. Similarly, in Section 4 of the Act, there is a provision that All citizens of the Philippines abroad, who are not otherwise disqualified by law, at least eighteen years of age on the day of elections, may vote for president, vice president, senators and party list representatives. In this way, it seems that this act ensures the voting rights of not only the workers who went abroad with a permit during foreign employment, but also the voting rights of all Filipino citizens abroad.

11. Similarly, in Article 68(5) of the Constitution of the European country Spain, All Spaniards entitled to the full exercise of their political rights shall be electors and may be elected. The law shall recognize and the State shall facilitate the exercise of the right to vote by Spaniards who are outside Spanish territory. It seems that the constitution ensures that the citizens who are abroad have the right to vote. Or using the said right through the post office. Even in neighboring India, the Representation of the People (Amendment) Act, 2010 made some important amendments to the Representation of the People Act, 1950 and granted voting rights to Indian citizens living abroad. The following provision is made in section 20(a) of the said Act.

20(A)(1) - Notwithstanding anything contained in this Act, every citizen of India

Whose name is not included in the electoral roll.

Who has not acquired the citizenship of any other country, and,

Who is absent from his place of ordinary residence in India owing to his employment, education or otherwise outside India shall be entitled to have his electoral role in the constituency in which his place of residence in India as mentioned in his passport is located.

12. Thus, since India has not provided voting opportunities to citizens living abroad for a long time, it seems that since 2010, citizens living abroad due to employment, education and other reasons have been provided with the opportunity to vote by registering their names in the voter list of the constituencies according to the address mentioned in their passports. It seems that they can vote by appointing their representatives or through electronic voting. Namibia can be taken as another example of giving citizens abroad the opportunity to vote. The country amended the Electoral Act, 2009 and provided the opportunity to vote even to the citizens living abroad in the 2014 national elections. In section 23 of the said act In order to enable persons temporarily outside Namibia to be registered as voters and to take part in an election of the President or of members of the National Assembly, as contemplated in section 22(1)(a), the Commission may establish temporary registration points outside Namibia at any Namibian diplomatic mission, or where possible, at other convenient places as may be determined by the Commission in consultation with the Minister responsible for foreign affairs. Looking at the provision, it seems that even citizens living abroad temporarily can vote in the Presidential and National Assembly elections from diplomatic missions abroad or other suitable places designated by the Election Commission in consultation with the Ministry of Foreign Affairs. Similarly, since the 2005 election in Japan, citizens living abroad have also been given the opportunity to vote

13. The examples mentioned above are only a few representative examples of the various countries in order to give citizens abroad the opportunity to vote. Among these various countries, even in some countries with the same economic conditions and social and political environment as ours, legal and other arrangements have been made to provide voting opportunities to their citizens abroad. The main thing is the will and commitment of the state. The constitutional rights provided in the constitution are promises made by the constitution to the citizens, the implementation of which is the responsibility of the state. As the constitution has given citizens the right to vote, in order to give all citizens the opportunity to vote, the state should take immediate steps to implement it by making full use of the available resources and managerial capacity. In this context, it seems that the Opposition Election Commission has prepared a report in 2014 after studying the feasibility of providing voting opportunities to Nepalese citizens abroad. In the report submitted with the writ petition, the qualification required for voting, various methods of registration process of citizens abroad, the methods that can be used for voting and various technical aspects have also been analyzed.

seems Therefore, it seems that the act of providing the opportunity to vote in the election to the citizens who are outside the country during foreign employment can be practically implemented.

14. Now considering the fourth question whether the petitioner's request should be issued or not, the petitioner in the present writ petition has provided Nepali citizens who are employed abroad with the necessary resources and infrastructure to vote in all levels of elections from outside the country (External Voting/Absentee Voting). Voting

It seems that there is a demand that other orders should be issued along with mandates to provide an opportunity to participate in the work. In the case that the necessary legal and other infrastructures for providing the right to vote to the Nepali citizens who are abroad during foreign employment have not been arranged at present, it is considered that the present writ petition will be dismissed as it is not practically possible to immediately provide the right to vote to the citizens who are abroad during the foreign employment without the provision of the necessary legal and other infrastructures.

15. Even if the writ petition is considered to be rejected, as discussed in the above cases, the right to vote in the election is a basic human right and a constitutional right of the citizen, and in order to represent the real feelings and wishes of all citizens with equal opportunities in the election, the opportunity to vote in all levels of elections from outside the country is provided to the citizens who are employed abroad. As it seems to be necessary and can be practically implemented, the following instructional order has been issued in the name of the opposition parties to provide the right to vote to the Nepali citizens who are employed abroad by arranging the necessary legal and other infrastructures.

(1) Although the writ petitioner has demanded external voting in the case of Nepali citizens who are employed abroad, at present, a large number of Nepali citizens are working in diplomatic missions of Nepal, United Nations and international organizations, studying in universities and doing various professions. In the case of foreign employment, granting the right to external voting only to citizens abroad creates a situation of discrimination between citizens of the same status, so all Nepali citizens abroad participate in the election and participate in the great sacrifice of democracy and participate in the government formation process by enjoying the right to vote. The Nepal government has the responsibility to create the environment. Therefore, those who are employed abroad

Without limiting the right to vote to Nepali citizens only, we will take necessary steps to ensure the right of voting to all citizens abroad for various purposes.

(2) In relation to ensuring external voting / out of country voting right for Nepali citizens living abroad, those who have not renounced Nepali citizenship and have not acquired citizenship of any other country, who have completed the legal age for voting and who have a voter ID card and who are living abroad According to the diplomatic agency, the persons who are updated as eligible for external voting should be arranged accordingly.

(3) Identifying the challenges that may be faced during the election in relation to what method should be adopted to provide voting opportunities to the citizens living abroad, while also considering aspects such as expenses, technology, access to the citizens, necessary preparation of the political parties, etc. Different political parties, civil society, in relation to which option of voting directly in diplomatic bodies abroad, by proxy, by post or electronic voting can be used to provide more citizens the opportunity to vote in a clean, fair and fraud-free and confidential manner in which they can bear financial and managerial burdens. And if necessary, after consulting with the relevant agencies including the writ applicant organization, conduct a pilot test and arrange appropriate arrangements.

(4) Since Nepali citizens are scattered in different host countries and there may be different laws and policies in different countries regarding allowing foreign citizens to vote from within their own land, the government of different countries and the employer companies employing Nepali workers as per the need to provide that opportunity to the Nepali citizens abroad. Take necessary diplomatic initiatives.

(5) Since the right to vote is a fundamental and democratic right inherent in the sovereign right of the citizen, the responsibility of the legislature to create the necessary laws for the purpose of making that right to be enjoyed, the Government of Nepal to immediately complete the legislative process and present the bill to the Parliament for the purpose of creating the law with the necessary provisions. The order has been issued in the name of the office of the Prime Minister and the Council of Ministers. In addition, in order to create meaningful conditions for Nepali citizens living abroad to participate in the elections in the coming elections, necessary and appropriate initiatives should be taken to ensure the necessary resources, technology, structure and management to ensure the conditions until they can vote.

(6) For the purpose of creating a situation where citizens living abroad can participate in voting, to start the registration process without delay to collect the real data of citizens living abroad, and arrange an environment where Nepali citizens living abroad can participate in voting until the next election.

16. In order to monitor the implementation of this order, a copy of this order will be sent to the Directorate of Judgment Implementation and the information of this order will be given to the opposing parties and submitted to the Record Branch as per the Missile Rules.

I agree with that opinion.

judge Purushottam Bhandari

Bench Officers: Sandesh Shrestha, Shivprasad Parajuli

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