

Is CIAA Abusing Its Authority? Siddhi B Ranjitkar

Anybody who had read the State-run newspaper "gorkhapatra" on June 7, 2019 would surely find the very interesting news titled "Panch Barsha Saam Miseel Pu-gaya-na" means a file has not reach since last five years. The news stated that the Nepali Congress leader a one-time education minister Govinda Raj Joshi, who was indicted for the corruption case by the ruling of the Special Court, and was sentenced to a one-and-a-half year jail term, and the bail amount of NPR 21.6 million, and the fine accordingly, remained at large. Probably, he has been living a happy family life not going to jail for the last five years, and he has not paid any bail amount or fines so far.

In the last general elections held in 2017, his political party called Nepali Congress did not favor Govinda Raj Joshi with a ticket for the candidate in his constituency. His colleague and rival Ram Chandra Poudel received the ticket for the same constituency. In a fury, Mr. Joshi filed his candidacy as an independent candidate in the same constituency. So, Mr. Poudel went to the district office of the Election Commission and complained that how the man convicted of a corruption case could run for an office following the Election Act. Consequently, the Election Commission revoked the candidacy of Mr. Joshi, and he could not run for any office.

His colleagues Khum Bahadur Khadka, and Gupta served the jail term of 14 months and paid the fines and came out of the jail only to receive a hero's welcome from his supporters and political cadres, who met them at the prison gate. Probably, very smart Govinda Raj Joshi avoided the jail service, a large sum of the bail amount, and the fine. However, the ruling of the Special Court condemning Mr. Joshi to the jail term has stayed on hanging on him.

The news in "gorkhapatra" on June 7, 2019 stated that the joint bench of two Supreme Court justices such as Ishower Prasad Khatiwada and Sapna Pradhan Malla had issued an order to the Commission on Investigation into Abuse of Authority (CIAA) to submit the decision CIAA had made 'to file the case against Govinda Raj Joshi' and the concerned file within 15 days.

The Supreme Court Bench also demanded the explanation in writing to the question of why the actions should not be taken against the Secretary to CIAA and the officials for creating hurdles and unnecessary harassment to the delivery of justice. Even after several reminders the Supreme Court had sent to CIAA for sending the decision the CIAA had made on charging Joshi, and the concerned file since 2014, CIAA had not provided those documents.

In the order the joint bench of the Supreme Court had issued, it was said why the concerned officials and the secretary to the CIAA should not be indicted for the contempt of court following the Article 17 and Article 34 (2) for delaying the documents the Supreme Court had asked CIAA to send, the news in "gorkhapatra" stated.

Now, the question is how this country could stop the prime minister, ministers, and then the secretaries to the ministers, and other officials at the high positions in the State mechanism from abusing the authority and causing rampant irregularities in the State businesses and in delaying the development projects to meet their personal interest when the CIAA supposed to take the actions against the abuse of

authority had been probably abusing the authority not sending the concerned decision and the file to the Supreme Court as demanded. The CIAA officials must have guts to ignore the Supreme Court.

The second question is with what intention the CIAA officials had not sent the decision on indicting Govinda Raj Joshi for irregularities and the concerned file to the Supreme Court, and delayed the delivery of justice to Mr. Joshi. If the CIAA had no interest in keeping Mr. Joshi out of jail probably, CIAA would have sent the documents and the file to the Supreme Court a long time ago, and Mr. Joshi would have received the justice accordingly.

Both Mr. Joshi and CIAA had appealed to the Supreme Court for reviewing the ruling of the Special Court, the news in "gorkhapatra" stated. However, the case has remained pending at the Supreme Court for the last five years, as the CIAA had failed in providing the Supreme Court with the documents. Now obviously, the tolerance of waiting for the documents for the Supreme Court Bench had reached the limit; so, it issued an order to CIAA officials to send the documents otherwise they would be indicted for the contempt of court.

The third question is whether this country needed such an independent agency as CIAA for curbing the abuse of authority if it were to ignore even the letters of the Supreme Court of Nepal for sending the documents in other words it did not honor even the simple administrative work of sending the documents the Supreme Court had asked for.

What the parliament could do to discipline any autonomous State agency such as CIAA was to impeach its chief or the concerned members of the commission or the commission itself could take actions against any officers or officials for indiscipline. Both such possibilities had not been realized, yet.

In this case of not sending the documents as the Supreme Court had asked for, the concerned responsible officials for sending such documents needed to be subject to administrative actions for not performing their duty. That would be the rule of law. However, again the question was who had been following the rule of law in this country except for the common folks, who were often subjected to the police brutality.

Would lawmakers engage in such businesses of cleaning of the irregularities in the performances of the autonomous agencies? To answer this question in the positive manner would be hard because the directly elected lawmakers would have pocketful of the taxpayers' money for the coming FY 2019. So, they did not even bother to participate in the most important budget discussion. They did not need anything more than what they had already received. Once they had sufficient resources to get elected to the parliament in the next general elections they did not look back.

The House of Representatives hall had been almost empty when the budget discussion was held. Only those lawmakers were present who wanted to speak something about the budget, and of course the finance minister for listening to the speakers. After completing the allotted time to speak, those lawmakers even did not stay on for listening to what other lawmakers would say about the budget.

So, the parliamentarians who were supposed to discipline everybody in the administration, autonomous agencies, and the State mechanism had been the most

indiscipline. With the provision for NPR 60 million per a directly elected lawmaker made in the budget for the FY 2019, the parliament seemed to be entirely empty, as they did not see it necessary to attend. However, most of them were there when they needed to shout for the rise in the amount of the money they were going to receive for the so-called development of the respective constituencies.

However, a very sincere and young lawmaker named Pradip Yadav said in the parliament that without that money he would not be able to get elected to office next time. The idea of doing justice to other contenders did not hit his not-so-well-shaped head. So, he did not care for anybody.

House Speaker had to stay on no matter how many lawmakers had taken part in the parliamentary session. He could neither skip the session as other lawmakers did nor could discipline the parliamentarians. Poor House Speaker had to be there throughout the session holding the session even though only a few lawmakers there to speak or listen, and see what had been going on. Then, the question was who really could discipline all the indiscipline folks in this country either in the parliament or elsewhere in the world of the State mechanism.

News clipping

Gorakhpur June 7, 2019

पाँच वर्षसम्म मिसिल पुगेन

■ १५ दिनभित्र मिसिलसहित उपस्थित हुन अख्तियारका सचिवलाई सर्वोच्चको आदेश

■ **नारायण काफ्ले**

काठमाडौँ, जेठ २३ गते। नेपाली कांग्रेसका नेता एवं पूर्वमन्त्री गोविन्दराज जोशीसहितलाई मुद्दा चलाउन अख्तियारले गरेको निर्णय र मिसिल १५ दिनभित्र पेस गर्न सर्वोच्च अदालतले अख्तियार दुरुपयोग अनुसन्धान आयोगलाई आदेश दिएको छ।

पाँच वर्षसम्म पटकपटक ताकेता गर्दा पनि मिसिल प्राप्त नभएको भन्दै अदालतले सचिव र अन्य कर्मचारीसँग लिखित जवाफ पनि माग गरेको छ। जवाफ र मिसिलसहित १५ दिनभित्र आफैं अदालतमा उपस्थित हुन पनि सर्वोच्चको आदेशमा भनिएको छ।

न्यायाधीशद्वय ईश्वरप्रसाद खतिवडा र सपना प्रधान मल्लको संयुक्त इजलासले न्याय सम्पादन प्रक्रियामा अख्तियारले अनावश्यक हैरानी पुऱ्याएकोसमेत आदेशमा उल्लेख छ। अदालतले जोशीसहित उनका साला ताराराज पाण्डेमाथि मुद्दा चलाउने निर्णयको मिसिल माग गरेको सर्वोच्चका सञ्चारविज्ञ किशोर पौडेलले जानकारी दिनुभयो।

अदालतले न्याय सम्पादन प्रक्रियामा अनावश्यक हैरानी सिर्जना गरेको र अवरोधसमेत पैदा गरेकाले अख्तियारका सचिव तथा कर्मचारीलाई अदालतले कारवाही किन नगर्ने भन्दै लिखित जवाफसमेत माग गरेको हो। लिखित जवाफ नपरेमा वा जवाफ दिने समय नाघेमा मुद्दाको पेसी चढाउन पनि इजलासले आदेश गरेको छ। सर्वोच्चले आदेशमा भनेको छ, “आयोग स्वयंले गरेको निर्णय, आयोगको आफ्नो काम-कारवाहीसम्बन्धी रजिस्टरलगायत अभिलेख पठाउन भनी २०७१ साल

भदौ देखि हालसम्म पटकपटक अदालतबाट लेखी पठाउँदा अहिले करिब पाँच वर्षसम्म पनि आदेश बमोजिमको अभिलेख कागजात उपलब्ध नगराउनु आपत्तिजनक देखिन्छ। यसबाट न्याय निरुपणमा ढिलाइ भएको, न्यायिक प्रक्रियामा अवरोध पैदा भएको तथा मुद्दाका पक्षलाई अनावश्यक हैरानी हुन पुगेको देखियो। यस प्रकारको प्रवृत्ति स्वीकार्य हुन सक्दैन।”

के हुन्छ सजाय ?

सर्वोच्चको संयुक्त इजलासले मिसिल नपठाएको आरोपमा न्याय प्रशासन ऐनका दुईवटा दफा अख्तियारका सचिव र कर्मचारीका लागि आकर्षित गरेको छ। दफा १७ र ३४ (२) अनुसार किन कारवाही नगर्ने आदेशमा भनिएको छ। दफा १७ अनुसार सचिवसहित कर्मचारीमाथि

अदालतको अपहेलनामा कारवाही हुन सक्नेछ। जवाफ चित नबुझे इजलासले अपहेलनामा कारवाहीका लागि थप आदेश दिन सक्नेछ।

यस्तै दफा ३४ (२) ले भने माग गरेका मिसिल तथा कागजात नपठाउँदा हुने सजायको व्यवस्था गरेको छ। उक्त दफाअनुसार विभागीय प्रमुख तथा कर्मचारीलाई पटकपटक एक हजारदेखि दस हजार रुपियाँसम्म जरिवाना गर्न सक्ने व्यवस्था छ।

यस्तो छ घटनाक्रम

पूर्वमन्त्री जोशीलाई विशेष अदालतले २०६९ साउन १० गते भ्रष्टाचारी ठहर गरेको थियो। विशेषले उहाँलाई डेढ वर्ष कैद तथा दुई करोड १६ लाख १४ हजार ३७६ रुपियाँ बिगो र सोही बमोजिमको जरिवाना हुने ठहर गरेको थियो। (बाँकी पृष्ठ २ मा)

पाँच वर्षसम्म...

अख्तियारले जोशीसँग तीन करोड ९३ लाख ६२ हजार ५७६ रुपियाँ गैरकानुनी सम्पत्ति रहेको मागदाबी गरेको थियो। जोशीविरुद्ध मुद्दा चलाउने निर्णय अख्तियारले २०६० वैशाख २५ गते गरेको थियो।

विशेषले दोषी ठहर गरेपछि जोशी र नेपाल सरकार दुवै पक्षले सर्वोच्चमा पुनरावेदन गरेका थिए। पुनरावेदन परेपछि सर्वोच्चले मुद्दा चलाउने निर्णयको रजिस्टर र सक्कल मिसिल माग गरेको थियो। अदालतले २०७१ भदौ २९ गते आदेश गरेको थियो। आदेशको लामो समयसम्म जवाफ नपठाएको अख्तियारले २०७१ कात्तिक २ गते निर्णयसम्बन्धी कागजात अभिलेखमा नभेटिएको जवाफ पठाएको थियो।

सर्वोच्चले पुनः २०७३ भदौ २० गते मिसिल ७ दिनभित्र उपलब्ध गराउन पत्राचार गरेको थियो। सोको जवाफ लेख्दै अख्तियारले असोज २ गते मिसिल खोजतलास भइरहेको पत्राचार गरेको थियो। त्यसयता कुनै पनि जवाफ प्राप्त भएको छैन।