

A COMMITTEE FOR C.R. OF C.A.P. & ORS.

v.

STATE OF ARUNACHAL PRADESH & ORS.

(Writ Petition (Civil) No. 510 OF 2007)

B

SEPTEMBER 17, 2015

[ANIL R. DAVE AND ADARSH KUMAR GOEL, JJ.]

C *Citizenship Act, 1955 – s. 5(1)(a) – Citizenship rights*
D *on Chakmas and Hajongs – Conferment of – Writ petition*
E *filed seeking grant of citizenship rights to Chakmas and*
F *Hajongs – Chakmas and Hajongs had migrated to India in*
1964-69 and settled in the State of Arunachal Pradesh –
Held: It is acknowledged on the basis of stand of the
Government of India that the Chakmas have a right to be
granted citizenship subject to the procedure being followed
– There is recognition by judicial decisions that they cannot
be required to obtain any Inner Line permit as they are settled
in the State of Arunachal Pradesh – Thus, the Government
of India and the State of Arunachal Pradesh directed to
finalise the conferment of citizenship rights on eligible
Chakmas and Hajongs and also to ensure compliance of
directions in judicial decisions for protection of their life and
liberty and against their discrimination in any manner –
Constitution of India, 1950 – Art. 32.

G *National Human Rights Commission vs. State of*
Arunachal Pradesh 1996 (1) SCR 278: (1996) 1
SCC 742; All Arunachal Pradesh Students Union
(AAPSU) vs. The Election Commission of India
PIL No. 52 of 2010 dated 19th March 2013 by
Gauhati High Court; Peoples Union for Civil
Liberties vs. Election Commission of India & Ors.
H *W.P. No. 886 of 2000 dated 28th September*
2000 by Delhi High Court; State of Arunachal
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Pradesh vs. Khudiram Chakma 1993 (3) SCR 401: (1994) Supp. 1 SCC 615 – referred to. A

Case Law Reference

1996 (1) SCR 278 referred to. Para 2
1993 (3) SCR 401 referred to. Para 17 B

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 510 of 2007

Under Article 32 of the Constitution of India C

Colin Gonsalves, Sanjay Kumar Visen, Nitesh Kumar Singh, Neha, for the Appellants.

P.S. Patwalia, ASG, Sadhana Sandhu, Tushar Bakshi, (for Sushma Suri), Anil Shrivastav, Rituraj Biswas, Anitha Shenoy for the Respondents. D

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J. 1. This petition under Article 32 of the Constitution of India mainly seeks direction against Union of India through Ministry of Home Affairs to grant citizenship to the Chakma and Hajong Tribals who migrated to India in 1964-1969 and were settled in the State of Arunachal Pradesh. E F

2. Petitioner No.1 has described itself as "Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh" ("CCRC"). According to the averments in the petition, representations were filed with the National Human Rights Commission ("NHRC") alleging persecution of Chakmas and Hajongs in the State of Arunachal Pradesh. The NHRC approached this Court by way of a Writ Petition (C) No.720 of 1995 titled "**National Human Rights Commission vs. State of Arunachal Pradesh**" seeking direction from this Court to G H

A ensure that the Chakmas and Hajongs are not forcibly ousted from the State of Arunachal Pradesh, which was disposed of on 9th January, 1996¹. In the said case, the Union of India appeared before this Court and stated that decision to settle the Chakmas in the State of Arunachal Pradesh was taken after discussion between the Government of India and the North-East Frontier Agency (“NEFA”) Administration (Predecessor of the State of Arunachal Pradesh). The Chakmas were residing in the State of Arunachal Pradesh for more than three decades and had close social, religious and economic ties. As per joint statement issued by the Prime Ministers of India and Bangladesh in February, 1972, the Union Government took a decision to confer citizenship on the Chakmas under Section 5(1)(a) of the Citizenship Act, 1955 but the State of Arunachal Pradesh had reservations on this count. The Central Government was in favour of a dialogue between the State Government, the Chakmas and all concerned to resolve the issue of granting citizenship while also redressing the genuine grievances of citizens of Arunachal Pradesh. The stand of the State of Arunachal Pradesh was that it had provided basic amenities to the Chakmas but the State had a right to ask the Chakmas to quit the State. The State could not permit outsiders to settle within its territory as it had limited resources and the Union of India had refused to share its responsibility. The Deputy Commissioner of the area was to forward the applications for citizenship after due inquiry but no such application was pending. Further stand of the State was that settlement of Chakmas will disturb its ethnic balance and destroy its culture and identity. The tribals of the State consider Chakmas as potential threat to their tradition and culture.

3. This Court considered rival submissions and held that the Chakmas apprehend threat on the All Arunachal Pradesh

H ¹ (1996) 1 SCC 742

Students' Union ("AAPSU") who were reported to be enforcing economic blockades on the refugee camps, adversely affecting supply of ration, medical and essential facilities to the Chakmas. Some Chakmas had died on account of blockade. This Court further noticed that Chakmas could invoke Section 5(1)(a) of the Citizenship Act by filing application in form prescribed by Part II of the Citizenship Rules, 1956. The observations in **NHRC case** (supra), *inter alia*, are as follows:-

"18. From what we have said hereinbefore, there is no doubt that the Chakmas who migrated from East Pakistan (now Bangladesh) in 1964, first settled down in the State of Assam and then shifted to areas which now fall within the State of Arunachal Pradesh. They have settled there since the last about two and a half decades and have raised their families in the said State. Their children have married and they too have had children. Thus, a large number of them were born in the State itself. Now it is proposed to uproot them by force. The AAPSU has been giving out threats to forcibly drive them out to the neighbouring State which in turn is unwilling to accept them. The residents of the neighbouring State have also threatened to kill them if they try to enter their State. They are thus sandwiched between two forces, each pushing in opposite direction which can only hurt them. Faced with the prospect of annihilation the NHRC was moved, which, finding it impossible to extend protection to them, moved this Court for certain reliefs.

19. By virtue of their long and prolonged stay in the State, the Chakmas who migrated to, and those born in the State, seek citizenship under the Constitution read with Section 5 of the Act. We

A *have already indicated earlier that if a person satisfies the requirements of Section 5 of the Act, he/she can be registered as a citizen of India. The procedure to be followed in processing such requests has been outlined in Part II of the Rules.*

B *We have adverted to the relevant rules hereinbefore. According to these Rules, the application for registration has to be made in the prescribed form, duly affirmed, to the Collector within whose jurisdiction he resides. After the*

C *application is so received, the authority to register a person as a citizen of India, is vested in the officer named under Rule 8 of the Rules. Under Rule 9, the Collector is expected to transmit every application under Section 5(1)(a) of the Act to the*

D *Central Government. On a conjoint reading of Rules 8 and 9 it becomes clear that the Collector has merely to receive the application and forward it to the Central Government. It is only the authority*

E *constituted under Rule 8 which is empowered to register a person as a citizen of India. It follows that only that authority can refuse to entertain an application made under Section 5 of the Act. Yet it is an admitted fact that after receipt of the*

F *application, the Deputy Collector (DC) makes an enquiry and if the report is adverse, the DC refuses to forward the application; in other words, he rejects the application at the threshold and does not forward it to the Central Government. The grievance of the Central Government is that since the DC does not forward the applications, it is not in a position to take a decision whether or not to register the person as a citizen of India. That is why it is said that the DC or Collector, who receives the application should be directed to forward the*

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same to the Central Government to enable it to decide the request on merits. It is obvious that by refusing to forward the applications of the Chakmas to the Central Government, the DC is failing in his duty and is also preventing the Central Government from performing its duty under the Act and the Rules.

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20. *We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty-bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics. Besides, by refusing to forward their applications, the Chakmas are denied rights, constitutional and statutory, to be considered for being registered as citizens of India."*

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A 4. Accordingly, direction was issued to the State of
B Arunachal Pradesh to ensure that life and liberty of Chakmas
residing in the State was protected against any attempt to evict
them by organized groups such as AAPSU and their
applications could be forwarded to the Central Government.

B 5. Case of the petitioners, further is that the application
of the State of Arunachal Pradesh for modification and Writ
Petition (C) No.593 of 1997 filed by an organization of tribals
of Arunachal Pradesh against the judgment of this Court was
C also dismissed. Another writ petition being Writ Petition No.13
of 1998 against the judgment of this Court was dismissed on
9th December, 2002. Thereafter applications were filed for
citizenship but the same were not acted upon. The Election
Commission of India in the light of judgment of this Court
D passed orders dated 3rd March, 2004 declaring the resolution
dated 14th May, 2003 passed by the State of Arunachal
Pradesh against facilities to the petitioners to be
unconstitutional but the authorities of the State of Arunachal
Pradesh had not forwarded the applications as required under
E Rule 9 of the Citizenship Rules to the Central Government.

6. Counter affidavit has been filed by the Union of India
stating that the applications directly received by the Ministry of
Home Affairs were forwarded to the Government of Arunachal
F Pradesh which had not been returned except few applications
with negative recommendations. The said applications were
returned back to the Government of Arunachal Pradesh.
Ministry of Home Affairs had advised the Government of
Arunachal Pradesh to act in compliance with the judgment of
G this Court.

7. The stand of the State of Arunachal Pradesh is that
there was no threat to the life and liberty of the Chakmas and
Hajong refugees. After receiving the judgment of this Court,
H the judgment was circulated to Inspector General of Police,

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Deputy Commissioners of the concerned Districts and A
Principal Chief Conservator of Forests. The State Government
was fully bound by the direction of this Court and had taken all
necessary steps to comply with the same. The State of
Arunachal Pradesh had received 4382 applications. Though B
the popular sentiment of the indigenous tribals was different,
the State of Arunachal Pradesh was honouring the order of
this Court. It is further stated that Chakmas and Hajong tribes
were settled in NEFA from 1964 to 1969 when there were no
elected bodies in the State of Arunachal Pradesh. The laws C
applicable in the State of Arunachal Pradesh like the
Government of India Act, 1870, the Bengal Eastern Frontier
Regulation, 1873, the Scheduled District Act, 1874, the Assam
Frontier Tract Regulation, 1880, the Assam Frontier Forest
Regulation, 1891, the Chin Hills Regulations, 1896 and the D
Assam Frontier (Administration of Justice) Regulation, 1945
(1 of 1945) were not taken into account. One thousand four
hundred ninety seven Chakmas have been included in the
electoral rolls.

8. The petitioners have filed a rejoinder affidavit alleging E
that children of Chakmas and Hajongs are denied educational
facilities. They were not being covered by the public
distribution system. They presented a petition to the 10th Lok
Sabha and also to Rajya Sabha Committee on Petitions. The F
said Committee in its 105th Report published on 14th August,
1997 made recommendation to grant Indian Citizenship to the
Chakmas but the said recommendation has not been acted
upon. The recommendation is as follows :

*"42. The Committee, therefore, recommends that G
the Chakmas of Arunachal Pradesh who came
there prior to 25.3.1971 be granted Indian
citizenship. The Committee also recommends
that those Chakmas who have been born in India
should also be considered for Indian citizenship. H*

A *The Committee further recommends that the fate of those Chakmas who came to the State after 25.3.1971 be discussed and decided by the Central Government and State Government Jointly. The Committees also recommends that*

B *all the old applications of Chakmas for citizenship which have either been rejected or withheld by Deputy Commissioners or the State Deputy Commissioner or the State Government continue to block the forwarding of such applications to*

C *Central Government, the Central Government may consider to incorporate necessary provision in the Rules (or the Act it so required) whereby it could directly receive, consider and decide the*

D *application for citizenship in the 23 case of Chakmas of Arunachal Pradesh. The Committee also recommends that Chakmas be also considered for granting them the status of*

E *Scheduled Tribes at the time of granting the citizenship. The Committee would like to earnestly urge upon the Central Government and State Government to ensure that until amicable solution is arrived at, the Chakmas are allowed to stay in*

F *Arunachal Pradesh with full protection and safety, honour and dignity”.*

9. When the matter came up for hearing before this Court on 1st August, 2012, the following order was passed :-

G *“Mr. B. Bhattacharyya, learned Additional Solicitor General for respondent No. 5, and Mr. Anil Shrivastav, learned counsel for respondent Nos. 1 to 4, pray for some time to seek instructions and also to ensure that the controversy raised in the Writ Petition is resolved at the hands of the*

H *Central Government and the State Government at the earliest.”*

10. Again on 28th August, 2012, following order was
passed :

*“Mr. B. Bhattacharyya, learned Additional Solicitor
General appearing for the respondent No. 5
- Union of India, submits that all 4637
applications for grant of citizenship in respect of
Chakmas received in the Ministry of Home
Affairs, Government of India have been
returned to the State Government as the
applications were not made to the appropriate
authority in prescribed form and were also
not accompanied with the recommendations
of the State Government as per statutory
requirement.*

*Having regard to the decision of this Court in
National Human Rights Commission Vs. State
of Arunachal Pradesh and Another, (1996) 1
SCC 742, and the directions contained therein,
we direct the State of Arunachal Pradesh to submit
a comprehensive report/affidavit to this Court in
respect of 4637 applications returned by the
Central Government to the State Government on
the following aspects in respect of each
application :-*

*(i) Whether the conditions laid down in the
relevant clauses of Section 5 of the Citizenship
Act, 1955 (for short, ‘Act’) are satisfied;*

*(ii) Whether the applicant has an intention to
make India his permanent home;*

*(iii) Whether the applicant has signed oath of
allegiance as specified in the Second Schedule
to the Act; and*

A *(iv) Whether the applicant is of good character and is otherwise a fit and proper person to be registered as a citizen of India.*

B *The above report/affidavit shall be submitted by the State of Arunachal Pradesh to this Court through the Secretary (Political), Government of Arunachal Pradesh within two months from today.*

C *A copy of the report/affidavit shall be given to the Advocate-on-Record for the petitioners well in advance."*

11. On 20th January, 2014, this Court passed the following Order:

D *"List the matter on 5th May, 2014, so as to enable the Joint High Powered Committee constituted vide Government of India's Order No.13/2/2010-NE-II dated 10/08/2010. to place on record the progress made in the matter.*

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We are sure that the Committee would make all efforts so that the work entrusted to it is concluded preferably before the next date of hearing."

F 12. Additional Affidavit dated 2nd January, 2013 was filed by the State of Arunachal Pradesh stating that the Government of India, Ministry of Home Affairs (N.E. Division) has constituted a committee under the Chairmanship of Joint Secretary (N.E.), Ministry of Home Affairs on 10th August, 2010 to examine various issues relating to settlement of Chakmas/Hajongs in Arunachal Pradesh including the possibility of granting Indian citizenship to eligible Chakmas/ Hajongs. The Committee has held its sitting on 9th January, 2012 and taken certain decisions. Thus, the issue was not being ignored though there was no delay in the matter.

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13. We have heard learned counsel for the parties and perused the record. A

14. Learned counsel for the petitioners submitted that their rights have been duly acknowledged by this Court in **NHRC case (supra)**. Still, their legitimate right of citizenship has not so far materialized. They have been settled after a conscious decision at the highest level of the Government of India. They could not be treated as foreigners. He has placed reliance on a judgment of the Gauhati High Court dated 19th March, 2013 in **PIL No.52 of 2010 titled "All Arunachal Pradesh Students Union (AAPSU) vs. The Election Commission of India"** dismissing a petition filed by AAPSU against the guidelines issued by the Election Commission of India for revision of electoral rolls in respect of areas where there is substantial presence of Chakmas and Hajongs. In the said judgment, the Memorandum dated 23rd March, 2005 issued by the Election Commission of India and further guidelines dated 3rd October, 2007 for revision of electoral rolls with reference to 1st January, 2007 as qualifying date are also referred to. The objection against the Chakmas being treated as ordinary residents of Arunachal Pradesh in absence of possession of valid Inner Line Passes was also considered. The Election Commission of India supported its guidelines with guidelines with reference to a judgment of the Delhi High Court dated 28th September, 2000 in **W.P. No.886 of 2000 (Peoples Union for Civil Liberties vs. Election Commission of India & Ors.)** B
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15. In the judgment of the Gauhati High Court, it was noted that in contradiction to those unwanted illegal migrants who sneak into the country, the Chakmas migrated to India on account of their displacement and the Government of India agreed to grant them citizenship. In these circumstances, the guidelines of the Government of India were held to be justified G
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A and did not warrant any requirement of Inner Line permit. The relevant observations are :

B *"[18] Having regard to the facts and circumstances which have been also highlighted by the Hon'ble Supreme Court as referred to above in NRHC case, we are of the view that these additional guidelines, having been issued in the peculiar circumstances obtaining, cannot be held to be discriminatory.*

C *Further, in view of the policy decision taken by the Government of India to settle the Chakma refugees in different States and also in Arunachal Pradesh in consultation with the authorities of the*

D *Arunachal Pradesh, and also to confer Indian citizenship, the contention of the petitioners that the aforesaid guidelines have the effect of violating the provisions of law in terms of lack of Inner Line Permit or violation of provisions of section 13 of*

E *the Registration of Births and Deaths Act, 1969 does not hold water. We are of the view that once a decision had been taken to settle these Chakma refugees in Arunachal Pradesh in consultation with the authorities of Arunachal Pradesh, they would*

F *become residents of Arunachal Pradesh and would not require the Inner Line Permit/Pass. Otherwise also, once they have been allowed to settle in Arunachal Pradesh, it would be deemed*

G *that such permits had been granted to them and in our considered opinion, any other view would negate and defeat the policy decision taken by the Government of India in consultation with the Arunachal Pradesh authorities to settle these*

H *Chakmas in Arunachal Pradesh.*

Similarly, as regards, the other contention of the petitioners that the guidelines would contravene the provisions of section 13 of the Registration of Births and Deaths Act, 1969 also cannot be accepted. It may be noted that the Chakmas had taken refuge in this country under distress and trying circumstances after having been uprooted from their hearth and homes and made to flee to avoid persecution. Further, later on, after having allowed to settle in Arunachal Pradesh, they had faced difficulties and harassments from the neighbouring local populace which had been taken note of by the Supreme Court in NHRC case as mentioned above. Therefore, issuing of the additional guidelines for the purpose of verification of the birth of the claimants on the basis of other credible materials for the purpose of enrolment in the electoral rolls where these Chakmas had been officially settled cannot be interfered with merely on the technical ground that certain provisions of Registration of Births and Deaths Act, 1969 have not been strictly complied with, if the evidences are otherwise credible and trustworthy.

We are of the view that the additional guidelines which had been issued by the Election Commission of India are merely to enable those Chakmas to enjoy such benefits as a citizen of this Country including the right to vote by having their names enrolled in the electoral rolls of the concerned constituency where they have been settled. Once, these Chakma refugees have been granted citizenship, they are entitled to enjoy all the rights and privileges that flow on becoming a citizen of this country and further, they are entitled

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A *to have their rights as citizens of this country protected and safeguarded.”*

16. We find merit in the contention of the petitioners. It stands acknowledged by this Court on the basis of stand of the Government of India that the Chakmas have a right to be granted citizenship subject to the procedure being followed. It also stands recognized by judicial decisions that they cannot be required to obtain any Inner Line permit as they are settled in the State of Arunachal Pradesh.

C 17. In ***State of Arunachal Pradesh vs. Khudiram Chakma***², this Court noted the ancient history of Arunachal Pradesh as follows :

D *“41. The history of the mountainous and multitribal north-east frontier region which is now known as Arunachal Pradesh ascends for hundreds of years into the mists of tradition and mythology. According to Pauranic legend, Rukmini, the daughter of King Bhishmak, was carried away on the eve of her marriage by Lord Krishna himself. The ruins of the fort at Bhalukpung are claimed by the Akas as the original home of their ancestor Bhaluka, the grandson of Bana Raja, who was defeated by Lord Krishna at Tezpur (Assam). A Kalita King, Ramachandra, driven from his kingdom in the plains of Assam, fled to the Dafla (now Nishang) foothills and established there his capital of Mayapore, which is identified with the ruins on the Ita hill. A place of great sanctity in the beautiful lower reaches of the Lohit River, the Brahmakund, where Parasuram opened a passage through the hills with a single blow of his mighty axe, still attracts the Hindu pilgrims from all over the country.”*

² (1994) Supp. 1 SCC 615

18. The above history shows the integral link of the State of Arunachal Pradesh with the rest of the country since ancient times. It is well known that the Chakmas and Hajongs were displaced from the area which became part of East Pakistan (now in Bangladesh) on construction of Kaptai Dam and were allowed to be rehabilitated under the decision of the Government of India. As earlier held by this Court, the Delhi High Court and Gauhati High Court, they need to be protected and their claims of citizenship need to be considered as per applicable procedure. They could not be discriminated against in any manner pending formal conferment of rights of citizenship. Their status also stands duly acknowledged in the guidelines of the Election Commission of India.

19. Learned Additional Solicitor General fairly stated that the Government of India will earnestly take appropriate measures in the matter, granted some more time.

20. Accordingly, we allow this petition and direct the Government of India and the State of Arunachal Pradesh to finalise the conferment of citizenship rights on eligible Chakmas and Hajongs and also to ensure compliance of directions in judicial decisions referred to in earlier part of this order for protection of their life and liberty and against their discrimination in any manner. The exercise may be completed at the earliest preferably within three months from today.