

Supreme Court of India

National Human Rights Commission vs State Of Arunachal Pradesh & Anr on 9 January, 1996

Equivalent citations: 1996 AIR 1234, 1996 SCC (1) 742

Author: A A.M.

Bench: Ahmadi A.M. (Cj)

PETITIONER:

NATIONAL HUMAN RIGHTS COMMISSION

Vs.

RESPONDENT:

STATE OF ARUNACHAL PRADESH & ANR

DATE OF JUDGMENT: 09/01/1996

BENCH:

AHMADI A.M. (CJ)

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AHMADI A.M. (CJ)

SEN, S.C. (J)

CITATION:

1996 AIR 1234

1996 SCC (1) 742

JT 1996 (1) 163

1996 SCALE (1)155

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T AHMADI, CJI This public interest petition, being a writ petition under Article 32 of the Constitution, has been filed by the National Human Rights Commission (hereinafter called "NHRC") and seeks to enforce the rights, under Article 21 of the Constitution, of about 65,000 Chakma/Hajong tribals (hereinafter called "Chakmas"). It is alleged that these Chakmas, settled mainly in the State of Arunachal Pradesh, are being persecuted by sections of the citizens of Arunachal Pradesh. The first respondent is the State of Arunachal Pradesh and the second respondent is the State of Arunachal Pradesh and the second respondent is the Union of India.

The NHRC has been set up under the Protection of Human Rights Act, 1993 (No.10 of 1994). Section 18 of this Act empowers the NHRC to approach this Court in appropriate cases.

The factual matrix of the case may now be referred to. A large number of Chakmas from erstwhile East Pakistan (now Bangladesh) were displaced by the Kaptai Hydel Power Project in 1964. They

had taken shelter in Assam and Tripura. Most of them were settled in these States and became Indian citizens in due course of time. Since a large number of refugees had taken shelter in Assam, the State Government had expressed its inability to rehabilitate all of them and requested assistance in this regard from certain other States. Thereafter, in consultation with the erstwhile NEFA administration (North East Frontier Agency - now Arunachal Pradesh), about 4,012 Chakmas were settled in parts of NEFA. They were also allotted some land in consultation with local tribals. The Government of India had also sanctioned rehabilitation assistance @ Rs.4,200/- per family. The present population of Chakmas in Arunachal Pradesh is estimated to be around 65,000.

The issue of conferring citizenship on the Chakmas was considered by the second respondent from time to time. The Minister of State for Home Affairs has on several occasions expressed the intention of the second respondent in this regard. Groups of Chakmas have represented to the petitioner that they have made representations for the grant of citizenship under Section 5(1)(a) of the Citizenship Act, 1955 (hereinafter called "The Act") before their local Deputy Commissioners but no decision has been communicated to them. In recent years, relations between citizens of them. In recent years, relations between citizens of Arunachal Pradesh and the Chakmas have deteriorated, and the latter have complained that they are being subjected to repressive measures with a view to forcibly expelling them from the State of Arunachal Pradesh.

On September 9,1994, the People's Union for Civil Liberties, Delhi brought this issue to the attention of the NHRC which issued letters to the Chief Secretary, Arunachal Pradesh and the Home Secretary, Government of India making enquiries in this regard. On September 30, 1994, the Chief Secretary, of Arunachal Pradesh faxed a reply stating that the situation was totally under control and adequate police protection had been given to the Chakmas.

On October 15, 1994, the Committee for Citizenship Rights of the Chakmas (hereinafter called "The CCRC") filed a representation with the NHRC complaining of the persecution of the Chakmas. The petition contained a press report carried in "The Telegraph dated August 26, 1994 stating that the All Arunachal Pradesh Students Union (hereinafter called "AAPSU") had issued "quit notices" to all alleged foreigners, including the Chakmas, to leave the State by September 30,1995. The AAPSU had threatened to use force if its demand was not acceded to. The matter was treated as a formal complaint by the NHRC and on October 28, 1994, it issued notices to the first and the second respondents calling for their reports on the issue.

On November 22,1994, the Ministry of Home Affairs sent a note to the petitioner reaffirming its intention of granting citizenship to the Chakmas. It also pointed out that Central Reserve Forces had been deployed in response to the threat of the AAPSU and that the State Administration had been directed to ensure the protection of the Chakmas. On December 7,1994, the NHRC directed the first and second respondents to appraise it of the steps taken to protect the Chakmas. This direction was ignored till September,1995 despite the sending of reminders. On September 25,1995, the first respondent filed an interim reply and asked for time of four weeks' duration to file a supplementary report. The first respondent did not, however, comply with its own deadline.

On October 12,1995 and again on October 28,1995, the CCRC sent urgent petitions to the NHRC alleging immediate threats to the lives of the Chakmas. On October 29,1995, the NHRC recorded a prima facie conclusion that the officers of the first respondent were acting in coordination with the AAPSU with a view to expelling the Chakmas from the State of Arunachal Pradesh. The NHRC stated that since the first respondent was delaying the matter, and since it had doubts as to whether its own efforts would be sufficient to sustain the Chakmas in their own habitat, it had decided to approach this Court to seek appropriate reliefs.

On November 2,1995, this Court issued an interim order directing the first respondent to ensure that the Chakmas situated in its territory are not ousted by any coercive action, not in accordance with law.

We may now refer to the stance of the Union of India, the second respondent, on the issue. It has been pointed out that, in 1964, pursuant to extensive discussions between the Government of India and the NEFA administration, It was decided to send the Chakmas for the purposes of their resettlement to the territory of the present day Arunachal Pradesh. The Chakmas have been residing in Arunachal Pradesh for more than three decades, having developed close social, religious and economic ties. To uproot them at this stage would be both impracticable and inhuman. Out attention has been drawn to a Joint Statement issued by the Prime Ministers of India and Bangladesh at New Delhi in February, 1972, pursuant to which the Union Government had conveyed to all the States concerned, It's decision to confer citizenship on the Chakmas, in accordance with Section 5(1)(a) of the Act. The second respondent further states that the children of the Chakmas, who where born in India prior to the amendment of the Act in 1987, would have legitimate claims to citizenship. According to the Union of India, the first respondent has been expressing reservations on this account. By not forwarding the applications submitted by the Chakmas along with their reports for grant of citizenship as required by Rule 9 of the Citizenship Rules, 1955, the officers of the first respondent are preventing the Union of India from considering the issue of citizenship of the Chakmas. We are further informed that the Union of India is actively considering the issue of citizenship and has recommended to the first respondent that it take all necessary steps for providing security to the Chakmas. To this end, Central para-military forces have been made available for deployment in the strife-ridden areas. The Union Government favours a dialogue between the State Government, the Chakmas and all concerned within the State to amicably resolve the issue of granting citizenship to the Chakmas while also redressing the genuine grievances of the citizens of Arunachal Pradesh.

The first respondent, in its counter to the petition, has contended before us that the allegations of violation of human rights are incorrect; that it has taken bona fide and sincere steps towards providing the Chakmas with basic amenities and has, to the best of its ability, protected their lives and properties. It is further contended that the issue of citizenship of the Chakmas has been conclusively determined by the decision of this Court in State of Arunachal Pradesh v. Khudiram Chakmas (1994 Supp. (1) SCC 615 - hereinafter called "Khudiram Chakma's case"). It is therefore contended that since the Chakmas are foreigners, they are not entitled to the protection of fundamental rights except Article 21. This being so, the authorities may, at any time, ask the Chakmas to move. They also have the right to ask the Chakmas to quit the state, if they so desire.

According to the first respondent, having lost their case in this Court, the Chakmas have "raised a bogey of violation of human rights."

The first respondent has filed a counter to the stand taken by the Union of India. The first respondent denies that the Union of India had sent the CRPF Battalions of its own accord; according to it, they were sent pursuant to its letter dated 20.9.1994 asking for assistance. It has also denied that certain Chakmas were killed on account of economic blockades effected by the AAPSU; according to it, these casualties were the result of a malarial epidemic. The first respondent reiterates that the sue queriers Constitutional position of the State debars it from permitting outsiders to be settled within its territory, that it has limited resources and that its economy is mainly dependent on the vagaries of nature; and that it has no financial resources to tend to the needs of the Chakmas having already spent approximately Rs.100 crores on their upkeep. It has also been stated that the Union of India has refused to share its financial responsibility for the upkeep of the Chakmas.

Referring to the issue of grant of citizenship it is submitted as follows:

"It is submitted that under the Citizenship Act, 1955 and the Rules made thereunder a specific procedure is provided for forwarding the application for grant of citizenship. According to that after receiving the application, the DC of the area makes necessary enquiries about the antecedents of the applicant and after getting a satisfactory report forwards the case to the State Government which in turn forwards it to the Central Government. It is submitted that on enquiry if the report is adverse the DC would not forward it further. It is submitted that the applications, if any, made in this regard have already been disposed of after necessary enquiry. There is no application pending before the DC."

It may be pointed out that this stand of the first respondent is in direct contravention of the stand adopted by it in the representation dated September 25,1995, submitted by it to the NHRC where it had stated:

"The question of grant of citizenship is entirely governed by the Citizenship Act, 1955 and the Central Government is the sole authority to grant citizenship. The State Government has no jurisdiction in the matter."

It is further submitted by the first respondent that under the Constitution, the State of Arunachal Pradesh enjoys a special status and, bearing in mind its ethnicity, it has been declared that it would be administered under Part X of the Constitution. That is the reason why laws and regulations applicable during the British Regime continue to apply even today. The settlement of Chakmas in large numbers in the State would disturb its ethnic balance and destroy its culture and identity. The special provisions made in the Constitution would be set at naught if the State's tribal population is allowed to be invaded by people from outside. The tribals, therefore, consider Chakmas as a potential threat to their tradition and culture and are therefore, keen that the latter do not entrench themselves in the State. Besides, the financial resources of the State without Central assistance,

which is ordinarily not forthcoming, would throw a heavy burden on the State which it would find well nigh impossible to bear. In the circumstances, contends the first respondent, it is unfair and unconstitutional to throw the burden of such a large number of Chakmas on the State.

We are unable to accept the contention of the first respondent that no threat exists to the life and liberty of the Chakmas guaranteed by Article 21 of the Constitution, and that it has taken adequate steps to ensure the protection of the Chakmas. After handling the present matter for more than a year, the NHRC recorded a prima facie finding that the service of quit notices and their admitted enforcement appeared to be supported by the officers of the first respondent. The NHRC further held that the first respondent had, on the one hand, delayed the disposal of the matter by not furnishing the required response and had, on the other hand, sought to enforce the eviction of the Chakmas through its agencies. It is to be noted that, at no time, has the first respondent sought to condemn the activities of the AAPSU. However, the most damning facts against the first respondent are to be found in the counter affidavit of the second respondent. In the assessment of the Union of India, the threat posed by the AAPSU was grave enough to warrant the placing of two additional battalions of CRPF at the disposal of the State Administration. Whether it was done at the behest of the State Government or by the Union on its own is of no consequence; the fact that it had become necessary speaks for itself. The second respondent further notes that after the expiry of the deadline of October 30, 1994, the AAPSU and other tribal student organisations continued to agitate and press for the expulsion of all foreigners including the Chakmas. It was reported that the AAPSU had started enforcing economic blockades on the refugee camps, which adversely affected the supply of rations, medical and essential facilities, etc., to the Chakmas. Of course the State Government has denied the allegation, but the independent inquiry of the NHRC shows otherwise. The fact that the Chakmas were dying on account of the blockade for want of medicines is an established fact. After reports regarding lack of medical facilities and the spread of malaria and dysentery in Chakma settlements were received, the Union Government advised the first respondent to ensure normal supplies of essential commodities to the Chakma settlement. On September 20, 1995 the AAPSU, once again, issued an ultimatum citing December 31, 1995 as the fresh deadline for the ousting of Chakmas. This is yet another threat which the first respondent has not indicated how it proposes to counter.

It is, therefore, clear that there exists a clear and present danger to the lives and personal liberty of the Chakmas. In *Louis De Raedt v. Union of India* [(1991) 3 SCC 554] and *Khudiram Chakma's* case this court held that foreigners are entitled to the protection of Article 21 of the Constitution.

The contention of the first respondent that the ruling of this Court in *Khudiram Chakma's* case has foreclosed the consideration of the citizenship of Chakmas is misconceived. The facts of that case reveal that the appellant and 56 families migrated to India in 1964 from erstwhile East Pakistan and were lodged in the Government Refugee Camp at Ledo. They were later shifted to another camp at Miao. In 1966, the State Government drew up the Chakma Resettlement Scheme for refugees and the Chakmas were allotted lands in two villages. The appellant, however, strayed out and secured land in another area by private negotiations. The State questioned the legality of the said transaction since under the Regulations then in force, no person other than a native of that District could acquire land in it. Since there were complaints against the appellant and others who had settled on

this land, the State, by order dated February 15, 1984, directed that they shift to the area earmarked for them. This order was challenged on the ground that Chakmas who had settled there were citizens of India and by seeking their forcible eviction, the State was violating their fundamental rights and, in any case, the order was arbitrary and illegal as violative of the principles of natural justice. On the question of citizenship, they invoked section 6-A of the Act which, inter alia, provides that all persons of Indian origin who came before January 1, 1966 to Assam from territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985, and who had been ordinarily resident in Assam since their entry into Assam shall be deemed to be citizens of India as from January 1, 1966. Others who had come to Assam after that date and before March 25, 1971, and had been detected to be foreigners, could register themselves. It will thus be seen that the appellant and others claimed citizenship under this special provision made pursuant to the Assam Accord. The High Court held that the appellant and others did not fall under the said category as they had stayed in Assam for a short period in 1964 and had strayed away therefrom in the area now within the State of Arunachal Pradesh. On appeal, this Court affirmed that view. It is, therefore, clear that in that case, the Court was required to consider the claim of citizenship based on the language of Section 6-A of the Act. Thus, in Khudiram Chakma's case, this Court was seized of a matter where 57 Chakma families were seeking to challenge an order requiring them to vacate land bought by them in direct contravention of clause 7 of the Bengal Eastern Frontier Regulation, 1873. The issue of citizenship was raised in a narrower context and was limited to Section 6-A(2) of the Act. The Court observed that the Chakmas in that case, who were resident in Arunachal Pradesh, could not avail of the benefit of Section 6A of the Act which is a special provision for the citizenship of persons covered by the Assam Accord. In the present case, the Chakmas are seeking to obtain citizenship under Section 5(1)(a) of the Act, where the considerations are entirely different. That section provides for citizenship by registration. It says that the prescribed authority may, on receipt of an application in that behalf, register a person who is not a citizen of India, as a citizen of India if he/she satisfies the conditions set out therein. This provision is of general application and is not limited to persons belonging to a certain group only as in the case of Section 6-A. Section 5, therefore, can be invoked by persons who are not citizens of India but are seeking citizenship by registration. Such applications would have to be in the form prescribed by part II of the Citizenship Rules, 1956 (hereinafter called "The Rules"). Under Rule 7, such application has to be made to the Collector within whose jurisdiction the applicant is ordinarily resident. Rule 8 describes the authority to register a person as a citizen of India under Section 5(1) of the Act. It says that the authority to register a person as a citizen of India shall be an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Home Affairs, and also includes such officer as the Central Government may, by a notification in the Official Gazette, appoint and in any other case falling under the Rules, any officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Home Affairs, and also includes such other officer as the Central Government may, by notification in the Official Gazette, appoint. Rule 9 next enjoins the Collector to transmit every application received by him under Section 5(1)(a) to the Central Government through the State Government or the Union Territory administration, as the case may be, along with a report on matters set out in clauses (a) to (e) thereof. Rule 10 provides for issuance of a certificate to be granted to persons registered as citizens and Rules 11 and 12 provide for maintenance of registers. These are the relevant rules in regard to registration of persons as citizens of India.

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 neighboring State which in turn is unwilling to accept them. The residents of the neighboring 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.

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 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. 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 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 Central Government. On a conjoint reading of Rules a and 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 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 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 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.

We are a country governed by the Rule of Law. Our Constitution confers contains rights on every humanbeing 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.

In view of the above, we allow this petition and direct the first and second respondents, by way of a writ of mandamus, as under:-

(1) the first respondent, the State of Arunachal Pradesh, shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected and any attempt to forcibly evict or drive them out of the State by organised groups, such as the AAPSU, shall be repelled, if necessary by requisitioning the service of para-military or police force, and if additional forces are considered necessary to carry out this direction, the first respondent will request the second respondent, the Union of India, to provide such additional force, and the second respondent shall provide such additional force as is necessary to protect the lives and liberty of the Chakmas; (2) except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein;

(3) the quit notices and ultimatums issued by the AAPSU and any other group which tantamount to threats to the life and liberty of each and every Chakma should be dealt with by the first respondent in accordance with law;

(4) the application made for registration as citizen of India by the Chakma or Chakmas under Section 5 of the Act, shall be entered in the register maintained for the purpose and shall be forwarded by the Collector or the DC who receives them under the relevant rule, with or without enquiry, as the case may be, to the Central Government for its consideration in accordance with law; even returned applications shall be called back or fresh ones shall be processed and forwarded to the Central Government for consideration;

(5) while the application of any individual Chakma is pending consideration, the first respondent shall not evict or remove the concerned person from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf; and (6) the first respondent will pay to the petitioner cost of this petition which we quantify at Rs.10,000/- within six weeks from today by depositing the same in the office of the NHRC, New Delhi.

The petition shall stand so disposed of.