

IMMEDIATE

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM AND ARUNACHAL PRADESH)**

PRINCIPAL SEAT

PIL No. 52 of 2010

1. **All Arunachal Pradesh Students Union(AAPSU)
represented by Shri Kanu Bagang, President,
NEFA Club, ESS Sector, Itanagar, Arunachal Pradesh.**
2. **Ojing Tasing, General Secretary,
AAPSU, ESS Sector, Itanagar, Arunachal Pradesh.**
3. **Kamta Lapung, Convenor, AAPSU
NEFA Club, ESS Sector, Itanagar, Arunachal Pradesh.**
4. **Takam Tatung, Secretary, Finance,
AAPSU NEFA Club, ESS Sector,
Itanagar, Arunachal Pradesh.**
5. **Chow Mongseng Monglang,
Spokesperson, AAPSU, P.O & P.S
Namsal Lohit District,
Arunachal Pradesh.**
6. **Thingnong Umbu,
Goju village, P.O & P.S Bordumsa Changlang District.**

... Petitioners.

-Vs-

1. **The Election Commission of India
represented by the Secretary,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi- 100001.**
2. **The Union of India represented by
the Secretary, Ministry of Home Affairs,
North Block, New Delhi- 100001.**
3. **The State of Arunachal Pradesh,
through the Chief Secretary,
Govt. of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.**
4. **The Chief Electoral Officer,
Arunachal Pradesh, Nirvachan Bhawan,
Itanagar, Arunachal Pradesh.**
5. **The Committee for Citizenship Rights of the
Chakmas of Arunachal Pradesh (CCRC),
Represented by Sri Santosh Chakma, General
Secretary, Ashok Buodda Vihar Old Power
House Road, Rajghat, New Delhi-110002.**

... Respondents

S. K. Chakma

BEFORE
THE HON'BLE CHIEF JUSTICE A.K. GOEL
THE HON'BLE MR JUSTICE N.KOTISWAR SINGH

For the Petitioners	:	Mr. Mr. P.K.Tiwari, Advocate
For the Respondents	:	Mr. A.M.Buzarbaruah, G.A, State of Arunachal Pradesh Mr. D.Barua, Advocate Mr. U.Dutta, Advocate
Date of hearing	:	14.12.2012
Date of Judgment & Order	:	19.03.2013

JUDGMENT AND ORDER (CAV)

N.Kotiswar Singh, J.

Heard Mr. P.K.Tiwari, learned counsel appearing for the petitioners, Mr. A.M.Buzarbaruah, learned Govt. Advocate appearing for the State of Arunachal Pradesh, Mr. D.Barua, learned Standing Counsel appearing for the Election Commission of India and Mr. U.Dutta, learned counsel appearing for the respondent No.5.

[2] The main grievance raised in the present Public Interest Litigation relates to the additional guidelines issued by the Election Commission of India in 2005 and 2007 for revision of Electoral Rolls in respect of areas where there are substantial presence of Chakmas and Hajongs namely, 14-Doimukh (ST), 46-Chowkham (ST), 49-Bordumsa-Diyum and 50-Miao (ST) Assembly Constituencies in the State of Arunachal Pradesh which, according to the petitioners are discriminatory and also contrary to the Constitutional and statutory provisions.

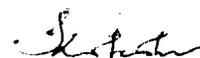
[3] The essential facts, in brief, which may be relevant for the purpose of consideration of the case may be referred to herein below.

[4] During the 1960's due to various reasons, a large number of persons belonging to Chakma and Hajong communities in the erstwhile Pakistan, now Bangladesh, had migrated to State of Assam and sought refuge. Thereafter, many of them were settled in the erstwhile North Eastern Frontier Agency (NEFA), which is now known as Arunachal Pradesh.

N.Kotiswar

[5] Sometime in 2003, the Election Commission of India ordered for a Special Summary Revision of Electoral Rolls w.e.f. 1.1.2003 as the qualifying date in the State of Arunachal Pradesh. On finding that Chakmas who have been settled in various areas in the State of Arunachal Pradesh had not been included in the Electoral Rolls, an organization espousing the cause of the Chakmas called "Committee for Citizenship Rights of Chakmas of Arunachal Pradesh" complained to the Election Commission of India stating that Chakmas who had settled in the State of Arunachal Pradesh and eligible to be Indian citizen were not included in the Electoral Rolls of 14-Doimukh (ST), 46-Chowkham (ST), 49-Bordumsa-Diyum and 50-Miao (ST) Assembly Constituencies of Arunachal Pradesh. Thereafter, on the basis of the said complaint, the Election Commission of India caused an enquiry to be made and on the basis of the enquiry report, the Election Commission of India ordered a Special Summary Revision of Electoral Rolls with reference to 1.1.2003 as the qualifying date in the aforesaid four Assembly Constituencies. While ordering the Special Summary Revision, the Election Commission of India had clarified that whosoever was born in India on or after 26.1.1950 but before 01.7.1987 is a citizen of India by birth by virtue of Section 3 (1) (a) of the Citizenship Act, 1955 and birth certificates issued by the competent authorities showing therein the place of birth so produced should be accepted as material proof to establish the claim of Indian citizenship. It was further clarified that mere non-production of document should not automatically form the basis for rejection of claim for inclusion in the Electoral Rolls and lack of documentary proof can be met through local enquiry.

[6] However, after such decision of the Election Commission of India, the State Cabinet of the State of Arunachal Pradesh passed a resolution on 14.5.2003 which stated that enrolment and revision of Electoral Rolls in respect of non- Arunachalis be done after verifying their Inner Line Permits and ensuring that these have the validity period of at least six month. As a result of the aforesaid Cabinet decision, the Electoral Registration Officers of the aforesaid four Assembly Constituencies reviewed their earlier decisions and rejected the claims of as many as 1497 claimants for inclusion in the Electoral Rolls. The Election Commission of India took exception to the said decision of the



State Cabinet considering it to be an interference with the statutory and constitutional powers of Election Commission of India in the matter relating to preparation of electoral rolls, by way of imposing conditions on the eligibility of persons for inclusion of names in the Electoral Rolls, which, according to the Election Commission of India was within its exclusive domain and jurisdiction. Accordingly, the Electoral Registration Officers were directed to review their decisions. However, inspite of the direction of the Election Commission of India, the EROs refused to revive the earlier decisions to include the names of Chakmas which they had earlier accepted for inclusion but subsequently rejected because of the Cabinet decision of the State of Arunachal Pradesh. As a result, the Election Commission of India vide its order dated 2.1.2004 suspended election works including the preparation and revision of Electoral Rolls in the said four Assembly Constituencies till such time the State Cabinet withdrew its resolution dated 14.5.2003 or amended the same appropriately.

[7] Subsequently, considering the impending Parliamentary elections, the Election Commission of India superceded the said earller order dated 2.1.2004 by an order dated 3.3.2004 and directed for publication of 2003 Electoral Rolls with all the names of Chakmas which the Electoral Registration Officers had earlier accepted for inclusion in the aforesaid four Assembly Constituencies. Since the names of the Chakmas were not included, no revision of Electoral Rolls was made in 2004 in the said four Assembly Constituencies though in respect of the remaining 56 Assembly Constituencies, the revision was undertaken.

[8] Later, the Election Commission of India vide its order dated 28.1.2005 ordered for intensive revision of Electoral Rolls in the entire State of Arunachal Pradesh with reference to 1.1.2006 as the qualifying date. However, in respect of the four Assembly Constituencies, the final publication of Electoral Rolls could not be accomplished. It may be stated that Election Commission of India had issued detailed guidelines vide their Memorandum dated 23.3.2005 for intensive revision of the Electoral Rollş in the State of Arunachal Pradesh. While issuing the said guidelines, additional guidelines were included for the areas having substantial presence of Chakma and Hajong refugees as provided in Paragraph 7.14



of the said guidelines, relevant portions of which are reproduced as below:-

"7.14. Additional guidelines for Enumeration in areas having substantial presence of Chakmas.

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(d) The ERO concerned, on receipt of the enumeration pad and manuscript from the supervisors shall segregate the names of Chakmas into two sections, as per the date of birth mentioned in the enumeration pad;

- (i) Containing the name of persons who were born in India between 26th January, 1950 and 1st July, 1987; and in whose case linkage could be established that their parents had migrated to Arunachal Pradesh in 1964, as per the refugee registration records or any other relevant records.
- (ii) Containing the names of persons who were born in India between 26th January, 1950, July, 1987; and in whose case linkage could not be established that their parents had migrated to Arunachal Pradesh in 1964,... per the refugee registration records or any other relevant records.

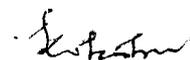
(e) In respect of those persons whose names have been included in category (d) (i), above, their names shall be straight away included in the draft electoral roll.

(f) In respect of persons whose linkage could not be established, category (d)(ii), the ERO immediately on receipt of the said list shall cause conduct of local verification to establish the eligibility for enrolment of name in the electoral rolls. The local verification officer shall, among other documentary evidence, rely on the following documents to establish the eligibility of a person of Chakma origin to enroll his or her name in the electoral roll:

- (i) Birth certificate showing date of birth and place of birth in India issued by the competent authority;
- (ii) School certificate indicating therein date of birth and place of birth in India, and any other certificate which is relevant in the State of Arunachal Pradesh in this regard.
- (iii) Only names of those persons whose identities have been established and whose were born in India between 26th January, 1950 and 1st July, 1987 shall be included in the draft electoral rolls.

The disposal of claims & objections received after publication of the draft rolls in the areas as identified above, shall be done by following the procedure stated above."

[9] However, inspite of the aforesaid guidelines, the finalisation of the Electoral Rolls in respect of the said four Assembly Constituencies was delayed. On enquiry by the Election Commission of India, it was found that Electoral Registration Officers had not accepted the birth



certificates produced by the Chakmas on the ground that the same were issued without following the procedure prescribed by the Births and Deaths Act, 1969.

Subsequently, the Election Commission of India ordered a summary revision of Electoral Rolls with reference to 1.1.2007 as the qualifying date in all Assembly Constituencies in the State of Arunachal Pradesh except the said four Assembly Constituencies. In respect of the said four Assembly Constituencies, the Election Commission of India ordered a Special Summary Revision of Electoral Rolls with reference to 1.1.2007 as the qualifying date and additional guidelines were issued for enrolment of Chakmas in these four Assembly Constituencies on 3.10.2007. Relevant portions of the said guidelines issued on 3.10.2007 are reproduced hereinbelow :-

"(5) In the earlier guidelines circulated vide letter No.23/RUN/2005 dated 22.7.2005 vide para 7.14(d), the EROs were asked to segregate the name of Chakmas enumerated into two sections after door to door visits. In the first list, the names of those persons were to be included who were born in India on or after 26.1.1950 but before 1.7.1987 and in whose case linkage could be established with their parents that they migrated to the State in the year 1964, as per the refugee registration or any other relevant records. The names appearing in this list were to be included in the electoral rolls of the concerned area.

(6) In the records list, those names were directed to be included from the enumerated list who were born on or after 16.1.1950 but before 1.7.1987 and in whose case linkage could not be established with their parents that they migrated to the state in the year 1964, as per the refugee registration records or any other relevant records. The names in the second list were to be subjected to local verification by the EROs to verify the eligibility for enrollment. Local verification officer was among other documentary evidence, to rely on the following documents to establish the eligibility of a person of Chakma origin to enroll his /her name in the rolls.

(i) Birth certificate showing the date of birth and place in India issued by the competent authority.

(ii) School Certificate indicating therein the date of birth and place of birth, if shown, in India or any other certificate which is relevant in the state of Arunachal Pradesh.

(iii) A certificate purporting to be a birth certificate, issued by a Government authority, maintaining official records showing the precise date and place of birth, as proof as of date and place of birth, notwithstanding any technical deficiencies in such certificates, such as application not having been

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made within the prescribed period for such certificate.

(7) All fresh claim/objections shall be disposed of by the EROs by keeping in view the guidelines referred to in para 5 and 6 above. Only the names of those persons whose identities have been established and who were born in India on or after 26.1.1950 but above 1.7.1987 shall be included in the rolls."

[10] The contention of the petitioners is that the said guidelines issued by the Election Commission of India in 2005 and 2007 with respect to the said four Assembly Constituencies concerning the Chakmas are discriminatory and unreasonable and also contrary to the provisions of law and also in violation of the constitutional safeguards provided to the people of Arunachal Pradesh. According to the petitioners, the State of Arunachal Pradesh enjoys a special status in the scheme of Indian Constitution and there are certain special laws which are applicable in the State of Arunachal Pradesh viz. the Bengal Eastern Frontier Regulation, 1873, the Scheduled Districts Act, 1874, the Assam Frontier Tracts Regulation, 1880 and the Chin Hills Regulation, 1896. It has been stated that Sections 2 and 7 of the Bengal Eastern Frontier Regulation, 1873 provide that no person other than local natives shall pass through the tracts without a 'pass'. In other words, no person other than Arunachalis could enter into the State of Arunachal Pradesh without Inner Line Pass. There are other provisions under the aforesaid Acts and Regulations which provide for special rights and privileges enjoyed by the tribal people of Arunachal Pradesh, which perhaps may not be necessary to be elaborated here as these do not have a direct bearing on the present issue to be decided.

The petitioners have thus contended that in absence of possession of a valid Inner Line Pass by the Chakmas, who are settled in Arunachal Pradesh, they could not be said to be ordinary residents of the aforesaid four Assembly Constituencies and hence, not entitled to be included in the electoral rolls in any part of Arunachal Pradesh.

According to the petitioners, the aforesaid additional guidelines issued by the Election Commission of India vide their Memoranda dated 23.3.2005 and 3.10.2007 are contrary to the general guidelines and also, contrary to the statutory provisions and as such, are not sustainable. According to the petitioners, the guidelines are contrary

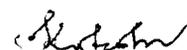
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to section 13 of the Registration of Births and Deaths Act, 1969 which stipulates the procedures to be adopted for registration of birth beyond the time prescribed by rules and as such, certificate issued without conforming to the aforesaid section 13 of the Registration of Births and Deaths Act, 1969 could not be held to be a valid one. It has been contended by the petitioners that, on the basis of the said guidelines, the Electoral Registration Officers are bound to accept the Certificates as genuine and thus, enroll the names of Chakmas who are reportedly born in State of Arunachal Pradesh on or before 26.1.1950 and till 1.7.1977 as electors in their respective Assembly Constituencies.

[11] Election Commission of India has filed its response in the present Public Interest Litigation. According to the Election Commission of India, as stated in their affidavit in-opposition dated 28.2.2008, the guidelines were issued in compliance with the provisions of law and also as per the order of the Delhi High Court in **W.P. 886 of 2000 (Peoples Union for Civil Liberties vs. Election Commission of India & ors.)**.

The Delhi High Court in the said writ petition had observed as follows:-

"3. There is practically no dispute on the question that a person acquires citizenship by birth if either of the parents is a citizen of India at the time of his birth and also a person, who is born in India in 1950 but before commencement of Amendment Act is a citizen of India. The aforesaid conditions are mutually exclusive of each other and are not conjoint. Obviously if a person claims to be citizen of India, for the purpose of inclusion of his/hr name in the electoral roll, material to substantiate the claim of citizenship has to be produced. Learned counsel for the Commission stated that if such material is produced, obviously, the same shall be considered and the decision shall be taken as to whether the claim of citizenship is correct or not. The claim obviously is relatable for the purpose of inclusion in the electoral roll. So far as the State Election Commission's role is concerned, it has to be also established that for the purpose of inclusion in the State electoral roll, the applicants have to satisfy the requirement of residence or such other conditions as may be stipulated in law. Therefore, in case any person, who claims inclusion in the electoral roll, produces material to that effect, same shall be considered by the Commission and/or the State Commission as the case may be. It goes without saying that decision in this regard will be taken within a reasonable time."

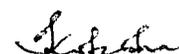


The Election Commission has also stated that aforesaid guidelines do not have the effect of including those persons in Electoral Rolls about whom there is no legally admissible evidence and/or any positive evidence of being born in India during the period specified in Section 3(1) (a) of the Citizenship Act, 1955 and by issuing the above guidelines, the Commission has not in any way restricted the powers of the Electoral Registration Officers to decide the issue. The Election Commission of India has also stated that para No.7 of the aforesaid guidelines dated 7.9.2007 clearly stipulates that only the names of those persons whose identities have been established and who were born in India on or after 26.1.1950 but before 1.7.1987 shall be included in the Electoral Rolls and accordingly, has denied that the guidelines issued by the Commission have the effect of including ineligible person in the Electoral Rolls.

It has also been further stated in the affidavit-in-opposition that the guidelines were issued in order to ensure that the revision work was carried out in accordance with the provisions of the Constitution and the order dated 28.9.2000 passed by the Delhi High Court in W.P. 886 of 2000 (Peoples Union for Civil Liberties vs. Election Commission of India & ors.). It has been further stated by the Commission that the guidelines do not have the overriding effect over the provisions of Birth, Death and Marriage Registration Act, 1886 and/or any State Rules framed thereunder, but are merely supplementary.

[12] The respondent No.5, the "Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh", which was subsequently allowed to be impleaded in this PIL, has also filed their affidavit-in-opposition.

The respondent No.5 in their affidavit-in-opposition while denying the allegations and averments made in the PIL has stated that the present PIL has been filed to harass the genuine Chakmas who were settled in the State of Arunachal Pradesh by the Government of India since about 4(four) decades and have subsequently raised their families and leading normal lives in the State. According to the respondent No.5, following large scale communal violence in the East Pakistan (now Bangladesh), in early 1964, a sizeable number of people belonging to various communities, namely, Buddhist, Hindu and Christian including Chakmas and Hajongs who are Buddhists and Hindu faith followers



respectively started fleeing into Assam, Arunachal Pradesh (which was part of Assam as Union Territory of NEFA), Tripura and West Bengal to avoid persecution by the majority community in their original country. By the middle of July 1994, at least 140,000 persons including Chakmas and Hajongs consisting of 2,902 families (14,888 persons) had migrated into Assam. As the then Government of Assam expressed its inability to settle such a large number of migrants in the State, requested for their shifting, and a suggestion was made that a substantial number of families could be accommodated in NEFA as some surplus land was available there. Thereafter, consultations were held between NEFA Administration, Government of Assam and the Ministry of Rehabilitation, Government of India for resettlement of some of these new migrants in NEFA. Accordingly, during 1964-1968, 2,902 families of Chakmas and Hajongs were settled in NEFA (Arunachal Pradesh) in three districts, namely, Lohit, Tirap and Subanstri Districts. Plots of lands varying from 5 to 10 acres per family depending upon the size of the family were allotted to the 2902 Chakma and Hajong refugee families under a centrally sponsored rehabilitation scheme. Cash grants for each of the families were also sanctioned by the Rehabilitation Ministry as rehabilitation grant.

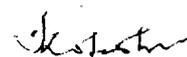
The Respondent no. 5 further stated that subsequently, considering their plight and also the fact that the Chakmas had resided for more than 4(four) decades having developed close social, religious, economic ties, the Government of India considered it impracticable and also inhuman to uproot them and took the decision to confer citizenship on the Chakmas. The respondent No.5, states that, however, the authorities of the State of Arunachal Pradesh and various organizations including the All Arunachal Pradesh Students Union had been threatening, harassing and creating all kinds of hurdles in the peaceful settlement of the Chakamas in Arunachal Pradesh and had been trying to prevent the Chakmas from getting citizenship and also being enrolled in the electoral rolls and attempts were made to evict them from Arunachal Pradesh by issuing "quit notices". Because of the constant harassment caused and threat received by the Chakmas, the National Human Rights Commission had to intervene, at whose instance the Supreme Court of this country was moved to secure the lives and properties of the Chakmas in Arunachal Pradesh and the respondent No.5 has brought attention of this Court to the decision of the Honble



Supreme Court rendered in **National Human Rights Commission – vs- State of Arunachal Pradesh & Anr.: (1996) 1 SCC 742**, hereinafter referred to as **NHRC** case.

[13] The respondent No.5 has also stated in their affidavit-in-opposition that some time in December, 2007, the Election Commission of India had deputed two teams, which visited the four Chakma and Hajong inhabited Assembly Constituencies and the concerned Electoral Offices as well as the representatives of the Chakmas and Hajongs. The said two teams submitted their reports in respect of the four Assembly Constituencies on 18.12.2007. Thereafter, during April, 2008, another team of senior officials of the Election Commission of India scrutinized all the relevant documents in connection with disposal and claims/objections relating to Chakmas and Hajong at the office of the Chief Election Officer, Itanagar. The said team scrutinized 8647 claims of Chakmas/Hajong claimants and 1115 objections against the Chakmas/Hajongs and submitted a report with a recommendation to the Election Commission of India on 2nd May, 2008.

On the basis of the said report, the Commission directed the CEO to conduct re-verification of all claims of Chakmas/Hajongs as well as objections against the Chakmas/Hajongs voters. Accordingly, during June and July, 2008, a team of senior officers of State carried out re-verification of the claims and objections regarding Chakmas/Hajong voters/claimants. During the course of re-verification, as many as 10 kinds of documents viz. Admit Card (issued by registered educational institutions), Birth certificates, Land allotment order, Land lease deed, Relief Eligibility Certificate (Screening Report issued after entry into India), Refugee Identity Cards (of the voters/claimants issued by Government of Arunachal Pradesh), Father's/mother's Refugee Identity Card, Refugee Registration Certificate (issued on entry into India during 1964-69), School Certificate (of the voters/claimants) and School Leaving Certificate (of the voters/claimants) were taken into consideration. On the basis of the said re-verification, objections as against 253 Chakmas/Hajong voters were rejected and their inclusion in the Electoral Rolls was upheld. Similarly, the claims of 282 Chakmas/Hajongs claimants were accepted and recommended for inclusion. On the basis of such re-verification, the Election Commission of India after approval allowed



publication of final Electoral Rolls in 2008. Thus, according to the respondent No.5, there has been no illegal entries in the electoral roll on the basis of the guidelines and all claims had been scrupulously examined and entries made in the electoral roll accordingly.

[14] As the main grievance of the petitioners is in respect of the aforesaid guidelines issued by the Election Commission of India in the year 2005 and 2007 with reference to the inclusion of the names of Chakmas in the Electoral Rolls of four Assembly Constituencies on the basis of the claims of the Chakmas by virtue of provision of Section 3(1)(a) of the Citizenship Act, 1955, it may be appropriate to refer to the said Section 3(1)(a) which provides as follows:-

"3. Citizenship by birth. -- (1) Except as provided in subsection (2), every person born in India -

(a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;

.....

.....

shall be a citizen of India by birth."

[15] What may be noted is that the issue which arises for consideration before this Court revolves round the factum of the birth of the Chakmas having taken place between 26th day of January, 1950 and 1st day of July, 1987 which, if proved would entitle such a claimant to be a citizen of India by birth and as consequential right to be to be included in the electoral roll of the concerned assembly constituency where they are settled. In other words, the issue is about the factum of birth during the aforesaid period, which could be decided in various manners including by production of the relevant documentary evidences issued by the competent authorities or on the basis of other relevant materials.

[16] We may now proceed to examine the issue in backdrop of the peculiar facts and situation obtaining in the present case.

Without adverting to the respective pleadings of the parties to ascertain the background facts, we may safely rely on certain facts which had been already taken note by the Hon'ble Supreme Court in **NHRC** case (supra). The relevant paragraphs are reproduced hereunder:-

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3. 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 4012 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.4200 per family. The present population of Chakmas in Arunachal Pradesh is estimated to be around 65,000.

4. 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 Deputy Commissioners but no decision has been communicated to 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.

5. On 9.9.1994, 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 30.9.1994, 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.

6. On 15.10.1994, 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 26.8.1994 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 30.9.1995. 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 28.10.1994, it issued notices to the first and the second respondents calling for their reports on the issue.

7. On 22.11.1994, 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

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response to the threat of the AAPSU and that the State Administration had been directed to ensure the protection of the Chakmas. On 7.12.1994, 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 25.9.1995, 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."

It was also the contention of the respondent No.5 that even though the Chakmas were allowed to settle in various parts of India including in the State of Arunachal Pradesh, they were subjected to harassments and attempts were made not to allow them to settle in the State of Arunachal Pradesh and to evict them therefrom, which had been also taken cognizance by the Hon'ble Supreme Court as reflected in paragraph Nos.15 and 16 of the aforesaid case of NHRC (supra), which are reproduced as below:-

"15. 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 30-10-1994, 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 or

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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 20-9-1995 the AAPSU, once again, issued an ultimatum citing 31-12-1995 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.

16. 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 India² and Khudiram Chakma case¹ this Court held that foreigners are entitled to the protection of Article 21 of the Constitution.

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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."

1. 1994 Supp (1) SCC 615

2. (1991) 3 SCC 554 : 1991 SCC (Cri) 886

The Hon'ble Supreme Court, after having considered the circumstances in which the Chakmas came to be settled in India and also considering the decision of the Govt. of India to grant citizenship to them, issued the following directions to safeguard their interest as contained in paragraph No.21 of the NHRC case (supra) as below:-

"21. 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 paramilitary 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 obtained from the persons concerned and 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 person concerned 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."

[17] From the above paragraphs, what transpires is that there were a large number of Chakma refugees who had been displaced from their country of origin and the Government of India had agreed to accommodate them in this country and also to grant citizenship to them, in contradistinction to those unwanted illegal immigrants who had sneaked into this country looking for a greener pasture or to indulge in nefarious antinational activities. In other words, a conscious decision was taken by the Government of India not to repatriate the aforesaid Chakmas refugees whom the Government India considered to be genuine refugees escaping discrimination and persecution in their country of origin and decided to settle them in India by granting citizenship, thus accepting them as citizens of this country.

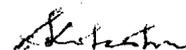
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[18] It is in the aforesaid background in which the Chakmas came to be settled in India and also the decision of the Govt. of India to grant citizenship to the Chakmas that the guidelines issued by the Election Commission of India are to be examined.

In our view the aforesaid guidelines had been issued by the Election Commission of India taking into consideration the peculiar circumstances in which the Chakmas refugees had been settled in the State of Arunachal Pradesh. The contention of the petitioners that the said guidelines are discriminatory, inasmuch as, special provisions have been provided for the Chakmas cannot be accepted as there is a rational basis behind such guidelines and hence, cannot be considered to be discriminatory. If certain additional guidelines had been issued to safeguard the interest of the Chakma refugees for whom a conscious decision was taken by the Government of India not repatriate but to settle them and confer citizenship of this country in the aforesaid background, these cannot be said to be either discriminatory or arbitrary.

The Chakmas, on the contrary, had been subjected to discrimination and harassment at the instance of the local tribal populations of Arunachal Pradesh as had been observed by the Supreme Court in the **NHRC** case (supra) and these additional guidelines have been issued to prevent such discrimination. 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.

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

[19] It is also now well settled that the powers of Election Commission as provided under Article 324 of Constitution of India are plenary in nature and includes all powers for necessary smooth conduct of election and such powers are only subject to validly enacted laws made by the Parliament the State Legislatures, which has been



reiterated in a series of judgments of the Hon'ble Supreme Court viz., **Mahindra Gill -vs- Chief Election Commission of India, (1978) 1 SCC 405; Special Reference No.1 of 2002 In re (Gujarat Assembly Election matter), (2002) 8 SCC 237 ; A.C Jose-vs- Sivan Pillai, (1984) 2 SCC 656** etc. We do not consider that the aforesaid guidelines issued by the Election Commission in exercise of powers under Article 324 of the Constitution of India override any provision of any Act or Rules.

Further, these impugned guidelines by their very nature being mere guidelines, and having not created any new rights or liabilities and also having not impinged upon the powers and jurisdictions of the EROs in our view, do not call for any interference from this Court.

It also seems, as contended by the respondent No.5 and not denied by the petitioners that, these guidelines had been acted upon and certain claims and counter claims regarding enrolment had been already entertained on which basis electoral rolls had been revised in 2008 in respect of the aforesaid four assembly constituencies.

[20] Accordingly, for the reasons discussed above, we are of the view that no case has been made out for any interference by this Court as these guidelines had been issued in conformity with the policy decision of the Government of India to settle the Chakmas in various parts of India including Arunachal Pradesh and to grant citizenship to them, and had been issued to protect the interest of these Chakma refugees including their right of franchise as a bona fide citizen of this country. Consequently, the present Public Interest Litigant petition is dismissed as devoid of merit, however, without any cost.

Sd/-N. Kotiswar Singh
JUDGE

Sd/- A.K. Goel
CHIEF JUSTICE

Memo No. HC XXIII 736 - 740 /PIL Dated 22.3.13

Copy forwarded for information and necessary action to:

1. The Election Commission of India, represented by the Secretary, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-100001.
2. The Union of India represented by the Secretary, Ministry of Home Affairs, North Block, New Delhi-100001.
3. The State of Arunachal Pradesh, through the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
4. The Chief Electoral Officer, Arunachal Pradesh, Nirvachan Bhawan, Itanagar, Arunachal Pradesh.
5. The Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRC), Represented by Sri Santosh Chakma, General Secretary, Ashok Buddha Vihar Old Power House Road, Rajghat, New Delhi-110002.

By Order,

Hei
22/3/13

Deputy Registrar (A)
Gauhati High Court, Guwahati

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