

IN THE HIGH COURT OF DELHI AT NEW DELHI

Civil Writ Petition No. 886 of 2000

MEMO OF PARTIES

IN THE MATER OF:

1. People's Union for Civil Liberties
Through its General Secretary
81, Sahyog Apartments
Mayur Bihar
Phase – 1
New Delhi

 2. Committee for Citizenship Rights
of the Chakmas of Arunachal Pradesh
Through its President
Ashok Buddha Vihar
Old Power House Road
Rajghat
New Delhi – 110 002
- ...Petitioners

VERSUS

1. Election Commission of India
Through the Chief Election Commissioner
Nirvachan Sadan
New Delhi – 110 001

 2. State Election Commission of Arunachal Pradesh
Through its Election Commissioner
C-Sector
Itanagar – 791111
Arunachal Pradesh

 3. Union of India
Through Secretary
Ministry of Home Affairs
North Block
New Delhi
- ...Respondents

Petitioner

Through: Prashant Bhushan

Counsel for the Petitioner
301 New Lawyers' Chambers
Supreme Court
New Delhi

New Delhi
Dated: 14.02.2000

28-9-2000.

Present: Mr Prashant Bhushan for the petitioner
Mr Manindnder Sinsh for UOI
Mr Anil Srivastava for respondent No.4
Mr P.R. Chopra for respondent No. 1

CWP 886/2000

Rule D.B.

Since a short point is involved, with the consent of the parties, we have heard the parties finally.

This petition has been filed with the prayer that the names of the Chakmas and the Hajongs be included in the electoral rolls. The prayers are to the following effect:-

- a) direct the Respondents to immediately commence a special revision of electoral rolls for enlistment of the names of all the eligible Chakma and Hajong citizens born in India, between 1964 and 1.7.1987 in the electoral rolls of the State of Arunachal Pradesh in accordance with the due process of law in a time bound manner; and
- b) direct the Respondents to enquire into omissions/commissions/refusal on the part of the officers/persons responsible for non-inclusion of the name of eligible Chakma and Hajong citizens in the electoral rolls and to take appropriate penal/departmental proceedings against such indicted officials/persons; and
- c) pass any other or further order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. It is a stand of the petitioner that Chakmas and Hajong, who were in India between 1964 and 1st July, 1987 are citizens of India in terms of Section 3(1)(a) of the Citizenship Act, 1955 (in short the Act), and, therefore, their names are to be included in this electoral roll for the State of Arunachal Pradesh. Counter affidavits have been filed by the Election Commission of India (in short the Commission) and State of Arunachal Pradesh (respondent no. 4). In the counter affidavit filed by the State of Arunachal Pradesh, respondent no. 4 it has been stated that there has to be production of evidence to show that a person has acquired citizenship rights in terms of the Section 3 of the Act and unless those material facts are established, there can not be a case of inclusion in the electoral rolls. It has been further stated that the State has no objection in granting Indian Citizenship to the Chakmas and Hajong refugees provided that they are permanently settled outside the State. In the counter affidavit filed by the U.O.I, it has been stated that according to Section 3 of the Act every person born in India

- a) on or after 26th day of January, 1950 but before the commencement of Citizenship (Amendment) Act, 1986 (in short the Amendment Act).
- b) on or after such commencement and either of whose parents is citizen of India at the time of his birth, shall be a citizen by birth.

It has been further stated that Central Government is of the view that persons settled in Arunachal Pradesh after their migration in 1964 but before the 1986, amendment to the Act would be citizens of India.

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/her 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.

We make it clear that we have not given any opinion on the question whether after the inclusion in the electoral roll, the person so included is to continue to reside in the State of Arunachal Pradesh or outside because we are told that the question is under consideration of the Apex Court. This petition stands disposed of.

September 28, 2000