

IN THE SUPREME COURT OF INDIA

ORIGINAL CIVIL JURISDICTION

WRIT PETITION (CIVIL) NO. 720 OF 1995

IN THE MATTER OF:

National Human Rights Commission ...Petitioner

Vs.

State of Arunachal Pradesh and another ...Respondents

SYNOPSIS

This Writ Petition filed in public interest under Article 32 is by the National Human Rights Commission (hereinafter referred to as NHRC) and seeks to prevent the hostile treatment of Chakma refugees numbering about 65,000 (many of them born in India) and settled presently mainly in Arunachal Pradesh, contrary to the mandate of Article 21 of the Constitution of India. The NHRC is set up under the Protection of Human Rights Act 1993 (No. 10 of 1994) (hereinafter referred to as “the Act”) and it is also empowered to approach this Hon’ble Court under the Act).

LIST OF DATES

- 19. 9. 94 - Letter from People’s Union for Civil Liberties, Delhi, to the NHRC.
- 29. 9. 94 - Letter by NHRC to Chief Secretary Arunachal Pradesh for Report
- 29. 9. 94 - Letter to Home Secretary, Government of India from NHRC making enquiries.
- 30. 9. 94 - Fax reply from Government of Arunachal Pradesh stating that situation was totally under control.
- 15. 10. 94 - Representation filed by Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh, which included Press Report in the Telegraph, dated 26. 08. 94 about “AAPSU issues ultimatum to foreigners – quit Arunachal by September 30.”
- 28. 10. 94 - Notice to Chief Secretary Arunachal Pradesh and Union Home Secretary for response in respect of petition-dated 15.10.94.

22. 11. 94 - Letter from Ministry of Home Affairs with a Note.
07. 12. 94 - D. O. Letter from Chairperson to Union Home Minister and chief Minister, Arunachal Pradesh enquiring about the action taken.
21. 06. 95 - Fax message from the State Government requesting for more time for furnishing reply.
08. 09. 95 - Directions of the Commission that in case report was not received from the State Government by 25. 09. 95, summons be issued to the Chief Secretary to appear in person on 10. 10. 95.
09. 09. 95 - D. O. letter from the Chairperson to the Chief Minister of Arunachal Pradesh and Union Home Minister forwarding a copy of the proceedings dated 08. 09. 1995.
25. 09. 95 - Interim reply of Government of Arunachal Pradesh.
27. 09. 95 - Reply from the Union Home Minister explaining the position and sending a copy of his D. O. letter to the Chief Minister of Arunachal Pradesh.
12. 10. 95 - Further petition from the Committee for Citizenship Rights of the Chakmas of the Arunachal Pradesh.
28. 10. 95 - Further petition from the Committee for Citizenship Rights of the Chakmas of the Arunachal Pradesh.
29. 10. 95 - Notice to the Chief Secretary and the Chief Minister of Arunachal Pradesh and copies of the proceedings to the Governor of Arunachal Pradesh, Union Home Minister and the Union Home Secretary, calling for urgent action.
30. 10. 95 - Proceedings of the Commission deciding to approach this Hon'ble Court seeking interim protection to Chakmas under Article 32 and raising the issue for determination and consequent remedial directions.
31. 10. 95 - Authorization to Secretary General to file a Writ Petition in this Hon'ble Court.
2. 11. 95 - Writ Petition filed in this Hon'ble Court

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WRIT PETITION (CIVIL) NO. 720 OF 1995

IN THE MATTER OF:

National Human Rights Commission,
Sardar Patel Bhavan, Sansad Marg,
New Delhi – 110 001
(Through its Secretary General)

...Petitioner

Vs.

1. State of Arunachal Pradesh,
Itanagar.
(Through its Chief Secretary) ...Respondent No. 1

2. Union of India.
(Through the Secretary)
Ministry of Home Affairs,
North Block,
New Delhi. ...Respondent No. 2

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

To

The Hon'ble Mr. Justice A. M. Ahmadi,
Hon'ble Chief Justice of India,
and His companion Judges of the Supreme Court of India.

Humble petition of the petitioner abovenamed:

MOST RESPECTFULLY SHOWETH:

1. This Writ Petition filed in public interest under Article 32 is by the National Human Rights Commission (hereinafter referred to as "NHRC") and seeks to prevent the hostile treatment of Chakma

refugees numbering about 65, 000 (many of them born in India) and settled presently mainly in Arunachal Pradesh, contrary to the mandate of Article 21 of the Constitution of India. The NHRC is set up under the Protection of Human Rights Act 1993 (NO. 10 of 1994) (hereinafter referred to as “the Act”) for better protection and availability of human rights to the citizens in all parts of the country, and for the promotion of human rights values. This also involves the Commission acting as a watchdog for the prevention of violation of human rights by public functionaries. It is also empowered this Hon’ble Court under the Act.

2. Around the year 1964, a large number of Chakma refugees mainly Buddhists from the then East Pakistan (now Bangladesh) came over to India on account of ethnic strife. About 35,000 of them have been settled in Arunachal Pradesh since 1964. The present population of Chakmas in Arunachal Pradesh is estimated to be around 65,000. Some members of the Hajong Tribe, who also migrated to India along with Chakmas, have also been settled in Arunachal Pradesh.
3. The question of conferring the status of citizenship on the Chakmas was considered by the Union Government from time to time. On 23rd September 1992, the Minister of State for Home and Parliamentary Affairs of Union Government informed the local Member of Parliament that “refugees from Bangladesh who came to India between 1964 and 1971 are eligible to the grant of citizenship according to the policy of the Government on the subject.” (A copy of the same is annexed as **Annexure ‘A’**).

On 29th April 1993 the Minister of State for Home Affairs in an answer to a Question in Parliament replied, “In Arunachal Pradesh, since 1964, only 35,000 Chakmas have settled down. About these people who have come, upto 1971, as has been mentioned, my predecessor has already stated that the Government of India has taken a decision to grant them citizenship” (A copy the extract is annexed as **Annexure ‘B’**).

4. On 7th July 1994, the Minister of State for Home Affairs in a letter to Member of Parliament indicated: “we have examined the matter in detail and find that the Chakma/Hajong, Tibetan and Yobin refugees were settled in Arunachal Pradesh in consultation with the then NEFA Administration (now Arunachal Pradesh). Under the Indira-Mujib Agreement of 1972, it was decided that the Chakma/Hajong refugees who came to India from the erstwhile East Pakistan (now Bangladesh)

before 25. 3. 71 will be considered for grant of Indian Citizenship.” (A copy of the same is annexed as **Annexure ‘C’**).

5. Groups of Chakmas have represented to the NHRC that application have been made to the local Deputy Commissioner for grant of Citizenship to them, but no decision has been communicated as yet. The manner in which reply has been given in the letters or in reply to questions in the Parliament indicates Government’s firm policy and intention of conferment of Citizenship, though for that purpose an order in every individual case would be necessary. In case individual applications are required for conferment of Citizenship, once decision in principle has been taken, such applications for every single person could always be filed and orders passed thereon. Application by some have already been filed and are pending under the Citizenship Act.
6. For quite some time, the Chakmas settled in Arunachal Pradesh have been complaining about repressive measures with a view to ensure their forcible expulsion from Arunachal Pradesh. It was submitted to the Commission that the Arunachal Pradesh Students Union had issued the deadline asking the Chakma refugees to quit the State by 30th September 1994. The State of Assam which shares borders with Arunachal Pradesh had, at that time, taken steps to prevent movement of Chakmas into that State and had issued shoot at sight orders as is feared from the newspaper report in the Telegraph dated 26. 8. 1994, a copy of the same is annexed as **Annexure ‘D’**.
7. Consequently, on 29. 9. 94, the Petitioner (N. H. R. C.) issued notice to the State Government of Arunachal Pradesh to give its response to the aforesaid complaint. On 30. 9. 94, a Fax message was received from the Arunachal Pradesh Government stating that the situation was totally under control and adequate police Protection had been given to Chakmas and the complaint of the Chakmas to the NHRC was totally false. A copy of the Fax Message is annexed hereto and marked as **Annexure –‘E’**.

However, on 15. 10. 94, a representation was filed by the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (hereinafter referred to as ‘CCRCA’) alleging large-scale violation of human rights of the Chakmas. Upon this representation, which was treated as a complaint under the Act, cognizance was taken by the Commission and report was called from the Ministry of Home Affairs, Government of India and the State Government of Arunachal Pradesh. In respect of notice issued by the NHRC, on 28. 10. 94, a note on the Chakma Refugees was presented by the Ministry of Home Affairs on

22. 11. 94 (A copy of the said note is enclosed herewith and marked as **Annexure 'F'**). This note stated that a view had been taken that the Chakmas/Hajongs could be considered for grant of Indian Citizenship and the matter was being pursued. This note also stated that the AAPSU started an agitation in August 1994 demanding expulsion of all foreigners including Chakmas/ Hajongs from Arunachal Pradesh by September 1994 and consequently, Central Forces were deployed and the State Administration was advised to ensure security of all residents including Chakmas/Hajong refugees.
8. On 7. 12. 94, the NHRC directed the State Government and the Union Government to send a list of detailed steps taken for the protection of Chakmas/Hajong refugees. Upto September 1995 no response was received to its direction.
9. By a letter dated 8. 9. 1995 to the State Government the NHRC noticed that the State Government had slept over the matter except for sending a cryptic message of 21. 6. 95 denying the allegations of the CCRCA and asking for more time to file a reply. Noticing the inaction of the State Government, the Commission passed a direction that unless the report was received by the 25th September 1995, consequential action would be taken. A copy of the Fax message dated 20. 6. 1994 annexed hereto and marked as **Annexure – "G"**.
10. On 27. 9. 95, the Hon'ble Minister for Home Affairs informed the NHRC that apart from the action taken during 1994, the Ministry of Home Affairs had advised the Chief Minister on 8. 9. 94 that comments of the State Government to the NHRC be expedited. On 12th October 1995, the CCRCA filed with the petitioner lists of –
- (a) 144 Chakmas who had died due to denial of Government medical treatment between July and November 1994.
 - (b) Victims whose houses were set on fire/demolished by the AAPSU activists between October and November 1994, numbering 185, and
 - (c) Schools closed/abolished by the State depriving educational facilities for Chakmas and Hajongs in Arunachal Pradesh which action affected approximately 4, 000 students.
11. On 25. 9. 95, an interim reply was received by the NHRC from the State Government of Arunachal Pradesh. The said reply inter alia relied on Judgment and Order of this Hon'ble Court reported in 1994

(Supp)/SCC 615. (The said letter without its annexures is annexed hereto and marked as **Annexure ‘H’**).

12. Despite this on 12. 10. 95 and 28. 10. 95 urgent petitions were received from CCRA alleging immediate threats and ultimatum for vacating the area given by AAPSU.
13. On 29. 10. 95, a direction was passed by the NHRC (copy of which is annexed hereto and marked as Annexure ‘I’), inter alia calling upon the Chief Secretary to the Government of Arunachal Pradesh to take firm action to ensure full protection of human rights of Chakmas in Arunachal Pradesh.
14. Based upon the complaint filed on 28. 10. 95 by the CCRCA (Copy enclosed as **Annexure ‘J’**), the NHRC passed a direction on 29. 10. 1995 where it recorded a prima facie conclusion that the service of Quit Notice issued by AAPSU and attempted enforcement thereof seems to be State supported and public forcement of such notice. The NHRC further recorded that on the one side the State was delaying the disposal of the matter by not furnishing its response properly and on the other hand it was trying to enforce eviction through its agencies with the assistance of outsiders. Consequently, a direction was made requiring the State Government to stay its hands and allow status quo to be maintained and this was communicated to the Governor, the Chief Minister and the Chief Secretary of the State. However, the Commission has doubts whether these directions would be effective and has therefore, decided to approach this Hon’ble Court. Another order was also passed by the Petitioner on 30. 10. 95, a copy of which is annexed hereto and marked as **Annexure – “K”**.
15. Consequently, on 31. 10. 95 the petitioner, Commission passed a direction authorizing its Secretary-General to file a writ petition under Articles 32 of the Constitution of India before this Hon’ble Court. (Copy of the said direction is annexed hereto and marked as **Annexure ‘L’**), hence the present writ petition.
16. (a) The petitioner respectfully submits that an order of the Apex Court upholding and protecting the rights of the Chakmas as on date and providing them the security of life, occupation of their residential houses and enjoyment of such property of which they are in possession, is legally necessary to meet the situation. Discriminatory treatment has been extended by not providing ration card facilities for obtaining essential commodities. Since admittedly these Chakmas had refugee status at the time they came to India and they have been officially treated as such, they are entitled to protection. Apart from

that, Government of India having expressed the intention to treat them as citizens, pending formal order in every individual case as required under the law, they are entitled to full protection and no discriminatory treatment against them could be justified, particularly in view of the mandate of Article 21 of the Constitution of India which is even available to an alien sojourning in India.

- 16 (b). It is respectfully submitted that the ratification of an International Convention/Treaty by the Government of India constitutes a statement to the International community that the ratifying State recognizes and accepts the principles of the Convention on the basis of the doctrine of “Legitimate Expectations” – In the absence of any procedure or law in India regulating aliens/refugees, the adherence to the Universal Declaration of Human Rights and with the ratification by the UOI of ICCPR in April 1979 (even with a reservation relating to applicability of Municipal laws), the respondents are bound in law to honour the legitimate expectations of the International community such ratification evokes.
- 16 (C). The present petition has been filed due to the hostile postures adopted by the All Arunachal Pradesh Students Union (AAPSU for short) and the threats administered by them to the Chakma refugees by which the Chakmas have been asked to leave Arunachal Pradesh under coercion. This action of the AAPSU threatens the life, survival and existence of the Chakma refugees contrary to Article 21 of the Constitution of India as also the provision of Article 13 of ICCPR, which reads as follows:

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case renewed by, and be represented for the purpose before, the competent authority for a person or persons especially designated by the competent authority.”

- 16 (d). It is respectfully submitted that the action of the AAPSU complained of, is not according to procedure established by law under Article 21 of the Constitution. Even alien residents in India are entitled to invoke the protection of Article 21, and the only law applicable is the Foreigners Act (a pre-Constitutional enactment) and in any event, the action complained of is not directly by the

State Government/ Union of India but by a private association of students and does not even purport to be under any provision of law and the said action appears to have been acquiesced to by the State Govt. by its conduct.

- 16 (e). The petitioner prays that Article 21 deserves to be interpreted in accordance with Article 13 of the ICCPR as per the decision of this Hon'ble Court in Nilabati Behera's case, 1993 (2) SCC 746, where Article 21 was interpreted in matters relating to compensation for unlawful arrest and detention, in the light of Article 9 of the ICCPR despite the reservations thereto of the Govt. of India while ratifying the covenant.
17. The petitioner has not filed any other writ petition in this Hon'ble Court or any other High Court in India seeking relief's similar to those claimed in this petition. The petitioner has no other alternate/ equally efficacious remedy except to approach this Hon'ble Court for the relief claimed in this petition.
18. The petitioner is therefore, approaching this Hon'ble Court on the following amongst other grounds which are taken without prejudice to one another:-

GROUNDS

- A. There being no set procedure for treatment of aliens, it is imperative upon the State to prescribe a fair and humane procedure that could conform to the requirements of Article 21 of the Constitution of India as interpreted by this Hon'ble Court. In the absence of, and pending the formulation of such procedure, by enactment of an appropriate ' law' as alien lawfully in the territory of India, is entitled as a matter of law to safeguards available at least under Article 13 of the ICCPR, notwithstanding the reservations incorporated by India while ratifying the ICCPR; this would be in consonance with a fair interpretation of Article 21 of the Constitution of India.
- B. It is respectfully submitted that as provided in Article 13 of the Universal Declaration of Human Rights, everyone has a right to leave any country including his own. Since India is a ratifier of Universal Declaration of Human Rights, such right necessarily connotes a corresponding right of entry in the receiving state such as India in the present case, which is thus duty bound to provide means to enforces such rights.

- C. It is respectfully submitted that whatever be the position of the Chakmas in so far as citizenship is concerned, qua the assurance held out in the Parliament and elsewhere by the Central Government, nevertheless the aliens in India cannot be denied their basic right of existence or be subjected to such treatment by the State which is not in accordance with law and Article 21 of the Constitution of India. Similarly, an alien can also not be subjected to such hostile treatment by a private body such as the AAPSU particularly when the action of AAPSU are with the tacit support and/or acquiescence of the functionaries of the State of Arunachal Pradesh. Besides the official statements of the Govt. of India as mentioned in Para 3 & 4 of this petition, constitute a legitimate expectation, which could be relied upon by the Chakma Refugees.
- D. It is respectfully submitted that India not being a signatory to the U. N. Refugee Convention of 1951 and 1967 makes no difference because the right of an alien to be accorded just, fair and equal treatment flows from Article 21 of the Constitution of India.
- E. The hostile and inhuman treatment being meted out to the Chakma refugees presently settled in Arunachal Pradesh is contrary to the mandate under Article 21 of the Constitution of India.
- F. That the 'quit notices' issued by the AAPSU (which have not been denounced by the State Govt.) are without any basis and have no sanction in law. The petitioner states that the coercive action of AAPSU with the tacit acquiescence of the authorities of respondent No. 1 State is not in accordance with the procedure established by law under Article 21 of the Constitution of India. No action has been taken by the State Govt. against the AAPSU.
- G. That the ratification of the International Covenant on Civil and Political Rights (ICCPR) by the Government of India is an indication that the ratifying States recognize and accept the principles of the Convention and such ratification invokes in the international community, a 'Legitimate Expectation' that the international Covenant would be honoured by India and therefore coercive action contrary to the aforesaid obligation cannot be sustained in law apart from being contrary to Article 51 of the Constitution of India.

H. That the Quit Notices issued by the AAPSU threatens the life, survival and existence of the Chakma refugees in a manner, which is contrary to the protection guaranteed under Article 21 of the Constitution of India. The petitioner submits that as per the decision of this Hon'ble Court reported in 1993 Vol. II SCC 746, Article 21 of the Constitution of India was interpreted in such a manner that compensation became payable for unlawful arrest and detention and as such, the same interpretation deserves to be followed in the instant case, so as to lead to an interpretation of Article 21 of the Constitution of India, which satisfies the requirements of the provisions of the UDHR and the provisions of the ICCPR.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Issue an appropriate Writ, order or direction including a writ of mandamus, or a writ, order or direction in the nature of mandamus
 - (i) directing respondent Nos. 1 and 2 to ensure due protection guaranteed to the lives and liberty of the Chakma refugees presently in Arunachal Pradesh Under Article 21 of the Constitution of India.
 - (ii) And a direction that the Chakma Refugees at present in Arunachal Pradesh be not ousted from their present habitats.
 - (iii) And respondent Nos. 1 and 2 be further directed to ensure that those directions are forthwith compiled with.
- b. Issue a writ of mandamus or a writ, order or direction in the nature of mandamus, directing respondent Nos. 1 and 2 to ensure that Quit Notices issued by AAPSU to Chakmas are not enforced or given effect to
- c. Issue a writ petition or mandamus or a writ order of direction in the nature of mandamus directing the respondents to adhere to the Universal Declaration of Human Rights for protecting in life, survival and existence of Chakma refugees, and to further ensure that Article 13 of the ICCPR is fully complied with.
- d. Pass such further or others orders, as this Hon'ble Court may deem fit and necessary.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVERY PRAY.

Drawn by:

(MUKUL MUDGAL)
ADVOCATE

Filed by:

(P. H. PAREKH)
ADVOCATE FOR THE PETITIONER

Settled by:

Shri F. S. Nariman
Senior Advocate

Dated 2nd November 1995