

Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh

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Most Urgent

By Hand & Fax

12 December 1997

Mr. R V Pillai
Secretary General
National Human Rights Commission
Sardar Patel Bhawan
Parliament Street
New Delhi-110001
Fax: 3340016

Dear Mr. Pillai,

This is to draw your attention to the denial of the right to franchise in the forthcoming Lok Sabha elections scheduled to be held in March 1998 to the Chakma and Hajong voters of Arunachal Pradesh who were born between 1964 and 1 July 1986 and are citizens under Section 3.1 of the Indian Citizenship Act, 1955.

Background:

In 1964, approximately 35,000 Chakmas and Hajongs from the erstwhile East Pakistan (now Bangladesh) migrated to India. They were issued valid migration certificates and settled in the then North East Frontier Agency, the present Arunachal Pradesh. The present population of the Chakmas and Hajongs is estimated to be around 65,000 persons.

All other migrants who came before 25 March 1971 were given citizenship under the Indira-Mujib Agreement of 1972. However, instead of granting citizenship to these Chakmas and Hajongs, the State Government perpetrated a series of atrocities on the Chakmas and Hajongs. This compelled the National Human Rights Commission of India to approach the Supreme Court of India in October 1995. The Honourable Supreme Court found that there was prima-facie evidence of atrocities perpetrated by the State Government of Arunachal Pradesh. In a judgement on 9 January 1996, the Supreme Court gave the following directions:

"(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 organized 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 obtained from the concerned persons and shall be processed and forwarded to the Central Government;

(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;"

The final petition of the State Government of Arunachal Pradesh for modification of the Supreme Court order was dismissed on 5 August 1996.

More than a full year has passed and the State Government of Arunachal Pradesh has yet to forward a single Chakma citizenship application to the Central Government. None of the Chakmas could submit their applications because of the all pervading fear created by the State Government of Arunachal Pradesh in contempt of the Supreme Court judgement. The Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh informed the National Human Rights Commission in this regard. Consequently, some Chakmas and Hajongs submitted their applications directly to the Central Government in 18 February 1997 and 19 June 1997. The Union Home Ministry forwarded the citizenship applications to the District Collectors for necessary verification. At the time of filing this memorandum, no verification of the applications was conducted by the District Collectors.

THE DENIAL OF THE RIGHT TO VOTE OF THE CHAKMAS AND HAJONGS WHO WERE BORN AFTER MIGRATION IN 1964 AND 1 JULY 1986:

The Citizenship Act of 1955 is unambiguous on citizenship by birth. Section 3(1) of the Indian Citizenship Act of 1955 states:

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

(a) on or after the 26th day of January, 1950, but before the commencement of the Citizenship Amendment Act, 1986;

(b) on or after such commencement and either of whose parents is a citizen of India at the time of his birth, shall be a citizen of India by birth."

Among the 65,000 Chakmas and Hajongs in Arunachal Pradesh, there are a large number of persons who were born in India between the period 1964 and 1 July 1986 when the citizenship Amendment Act came into force. Many of them have completed 18 years and hence are eligible voters. There is no question that they are citizens by birth under the law and hence are not required to apply for citizenship. However, those Chakmas and Hajongs who migrated from East Pakistan and were not born in India are eligible to claim citizenship by registration as provided under the Supreme Court judgement of 9 January 1997.

PRAYER:

The State Election Commission of Arunachal Pradesh has so far refused to register the eligible voters under Section 3.1 of the 1955 Citizenship Act.

The Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRCAP) shall be thankful if the National Human Rights Commission could kindly take into cognizance the difference between (1) the Chakmas and Hajongs who migrated from East Pakistan and hence are eligible for citizenship through registration and (2) the Chakma and Hajongs who are born between 1964 and 1 July 1986 and are citizens by birth under the Citizenship Act 1955. Allow me to reiterate that Citizenship Act of 1955 is absolutely clear that those who are born prior to 1 July 1986 are eligible for citizenship unless "(a) his father possesses such immunity from suits or legal process as is accorded to an envoy of an foreign sovereign power accredited to the President of India and is not a citizen of India; or (b) his father is an enemy alien and the birth occurs in a place then under occupation of the enemy" as provided under Section 3.2 of the Citizenship Act, 1955. As you are aware, Section 3.2 of the Citizenship Act, 1995 is not applicable in the case of the Chakmas and Hajongs who are born between 1964 and 1 July 1986.

The CCRCAP shall be grateful if the National Human Rights Commission could take the following initiatives to ensure that those Chakmas and Hajongs who are born between 1964 and 1 July 1986 could enjoy their fundamental right to franchise in the forthcoming Parliamentary General Elections.

1. Direct the Union Home Ministry to issue a notification stating that those Chakmas and Hajongs who are born between 1964 and 1 July 1986 are citizens by birth under the Citizenship Act 1955 and eligible for enrollment in the voter lists if they have completed 18 years and that the Union Home Ministry coordinates with the Election Commission of India in this regard.
2. Direct the Union Home Ministry to take necessary steps to process citizenship applications submitted by the migrant Chakmas and Hajongs under the Supreme Court judgement to enable them to participate in the forthcoming general elections.
3. Direct the Election Commission of India to take necessary measures to enrol these eligible Chakma and Hajong voters who are citizens by birth under the Citizenship Act of 1955;
5. Direct the Union Government of India to provide adequate Central Security Forces to maintain law and order situation during enrollment of these voters.
6. Direct the Election Commission of India to make on the spot assessment of other measures that may be necessary to ensure a free and fair poll in all Chakma and Hajong inhabited areas of Arunachal Pradesh.

With respectful regards,

Yours sincerely

Subimal Bikash Chakma
President