

**NATIONAL HUMAN RIGHTS COMMISSION VS STATE OF ARUNACHAL
PRADESH (1996) 1 SCC 742**

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INTRODUCTION

India does not have specific legislation for refugees and it is not a signatory of the Refugee Convention of 1951 and its 1967 Protocol, the key legal documents about refugee protection. However, the drafters of the Indian constitution were heavily influenced by the Universal Declaration of Human Rights. The protection of life and personal liberty for every person is guaranteed in the declaration¹. The identical clause was accepted by the constituent assembly as a fundamental right since India was a signatory to the declaration. The Indian constitution's "celebrity provision", Article 21², holds a special status as a basic right. It is enforceable against the state and ensures the right to life and personal liberty to both citizens and foreign nationals.³ Justice P. Bhagwati and Justice Iyer stated that Article 21 embodies a constitutional value of supreme importance in a democratic society⁴ and is characterized as the procedural Magna Carta protective of life and liberty respectively⁵.

Chakmas are primarily Buddhist communities living in the Indian subcontinent. They lost their properties due to the construction of the Kaptai Dam and hence started living in the Chittagong Hill Tracts erstwhile East Pakistan in 1964-65. To add to the problems, they faced religious persecution which made them seek asylum in India. They were provided with refugee camps in Arunachal Pradesh. However, the relationship between locals and Chakmas worsened over time as they began fearing that their culture and identity were being threatened because of the increasing population of the Chakmas. Therefore the locals mainly a private body started threatening Chakmas to leave their land claiming to use force to expel them from their state. This case deals with the petition drawn by the NHRC to the Supreme Court against the violation

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¹ Universal Declaration of Human Right (UDHR) 1948, art. 9

² Constitution of India, 1950, art. 21

³ PATHAK H, 'Concept of Right to Life and Its Protection under the Constitution of India' [2019] Revista de Drept Constituțional 55

⁴ Francis Coralie Mullin vs The Administrator Union Territory of Delhi, (1981) SCR (2) 516

⁵ Riya Jain 'Article 21: Understanding The Right to Life and Personal Liberty from Case Laws' (Lawoctopus, 12 December 2023) <<http://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>> accessed on 16 October 2024

of Article 21 of the Chakmas and for the grant of relief and justice to them.

FACTS

In 1964, many Chakmas fled Bangladesh and sought safety in Assam and Tripura. Since many of them had not yet obtained citizenship after years, it was becoming impossible for the state to rehabilitate them all. As a result, they were moved by agreement to what is now Arunachal Pradesh, the NEFA region. After discussing with the local tribes, 4012 Chakmas settled and were given lands for their livelihood. They were also provided with a monetary assistance of rupees 4200 per family.

As of 1996, around 65,000 Chakmas lived in Arunachal Pradesh. Many of them had made representations to the State government for their citizenship under Section 5(1) (a) of the Citizenship Act, 1955; however, the local Deputy Commissioner had not yet communicated their decision. Over time the relationship between the locals and Chakmas started to decline. The Chakmas claimed that they were being treated poorly with the final motive of forcibly expelling them from the state. These concerns were informed to the National Human Rights Commission by the Chakmas.

- ❖ **9-9-1994:** The People's Union for Civil Liberties, Delhi, complained about the issue to NHRC, which then issued letters to the Chief Secretary of Arunachal Pradesh and the Home Secretary of India to conduct an inquiry.
- ❖ **30-9-1994:** The Chief Secretary replied that there was no commotion and the situation was under control as the Chakmas were given adequate police security.
- ❖ **15-10-1994:** The Committee for Citizenship Rights of the Chakmas filed a complaint to NHRC regarding their persecution. They attached a press report along with the telegram dated 26-8-1994 stating that All Arunachal Pradesh Students Union had issued "quit notices" to all the alleged foreigners, including Chakmas, and warned them to leave the state before 30-9-1995 or else they would be forcibly removed. The NHRC then issued notices on 28-9-1994 to the State of Arunachal Pradesh and the Union of India.
- ❖ **22-11-1994:** The Ministry of Home Affairs sent a reply stating their intention of giving Chakmas their citizenship pointing out the Central Reserve Forces deployed for the

safety of Chakmas. They stated that they had directed the State government to protect the Chakmas from any brutality or force applied by AAPSU. Despite multiple reminders to the state authorities by NHRC to comply with the directions, the state ignored them till September 1995, later they filed a reply asking for time to file a supplementary report. However, they did not meet the criteria.

- ❖ **29-10-1995:** On receiving similar petitions by the CCRC, NHRC concluded that the State was siding with the AAPSU and that they were at par with the plan of expelling the Chakmas out of the State. Hence, NHRC had no remedy other than approaching this Hon'ble Supreme Court.

ISSUES

1. Whether the right to life and liberty under Article 21 of the Constitution applies to non-citizens residing in India and whether it puts an obligation on the State of Arunachal Pradesh to protect the Chakma refugees.
2. Whether the State authorities can restrict the applications or delay the process of sending them to the Central Government for citizenship under section 5(1) (a) of the Citizenship Act, 1955?

ARGUMENTS BY THE RESPONDENT

- The respondent contends that the allegations against them of violation of the human rights of Chakmas are incorrect. The state argues that it has taken sincere steps in providing the Chakmas, the basic amenities and has protected their lives and properties to the best of their abilities.
- The respondent further contended that the issue of citizenship has already been resolved in the case of *Khudiram Chakma v State of Arunachal Pradesh*⁶ where the Chakmas were denied citizenship. They are not entitled to any fundamental rights except under Article 21 of the Constitution, hence, the state can anytime ask the Chakmas to relocate or quit from staying in the state.
- The respondent submits that the process followed by the DC under the rules made in

⁶ *Khudiram Chakma v State of Arunachal Pradesh*, (1994) Supp (1) SCC 615

the Citizenship Act⁷. Adhering to that, the state contends that an inquiry is done after receiving the application by the DC. Based on the results, the applications are either forwarded to the Central Government or dismissed by the DC. Hence, there are no pending applications after the necessary inquiry.

- The respondent further contends that according to Part X of the Constitution, Arunachal Pradesh has been given a special status due to its ethnicity. The settlement of many Chakmas permanently would disrupt the balance and the cultural identity leading to disagreements and riots in the state.
- Lastly, the respondent countered the stand of the Union of India stating that no CRPF Battalions were sent to help in the security. The state also argues that the Union has denied any financial support to take responsibility hence, it would be unfair and unconstitutional to put the burden of almost 65,000 Chakmas on the State.

OBSERVATION/ REASONING

Firstly what concerned the bench the most was the ignorance by the State of all the threats to the life and liberty of Chakmas and that the state argues to have carried on sincere efforts to protect them. After a year of the ongoing proceedings, the NHRC came with prima facie proof that:-

- i. The service of the quit notices and the admitted enforcement were supported by the officers of the State.
- ii. The State delayed the disposal of the matter by not furnishing the required response and also sought to enforce the eviction of Chakmas through its agencies.
- iii. AAPSU issued a new notice about the fresh deadline of 31-12-1995 for the ousting of Chakmas which is still not addressed by the State.

Hence, the court establishes that the state has taken no steps to condemn the actions of the AAPSU.

The facts that caught the court's attention even more was the Union of India's contention where from its assessment of the situation they had sent two battalion forces for the protection of the

⁷ Citizenship Act, 1955

Chakmas. It does not matter whether it was the Union's step or whether it was requested by the State as the mere need to send two CRPF battalion forces speaks for the intensity of the situation itself. It was reported that the agitation and press for expulsion continued after the filing of the petition and that they had now started enforcing economic blockades on refugee camps which affected the rations, medical supplies, etc., to the Chakmas. There were multiple life casualties because of the lack of medicines which is condemning. On reports about the spread of malaria and dysentery in the camps, the Union of India advised the State to ensure a sufficient supply of commodities for health and sanitation.

It is therefore evident and on record that there is a threat to the lives and liberty of the Chakmas. The Court cites the case of *Louis De Raedt v Union of India*⁸ and the *Khudiram Chakma* case where the court held that the protection under Article 21 of the right to life and liberty is entitled to foreigners as well. The court also reasons that equal protection under the law is provided to all people under the constitution of India hence no person shall be deprived of his right to life and liberty except according to the established law. Thus the court affirms that it is the State's responsibility and it is bound by law to protect the life and liberty of any person residing in its territory. It cannot allow other groups or a body of people to threaten the people whether it be the citizens or non-citizens. If the State fails to protect the people, in this case, the Chakmas, then the State will fail to perform its constitutional duties as well as its statutory obligations. The court states that the State Government must act impartially and carry out its obligations to safeguard the life, and well-being of the Chakmas without being restrained by the local politics.

Secondly, the court observed that the contention of the State stating that the ruling in the *Khudiram Chakma* case has dismissed the application of citizenship to Chakmas is misconceived. In that case, the issue of citizenship was raised in a narrower context that was limited to section 6 (A) (2) of the Citizenship (Amendment) Act, 1985⁹. The Court reasoned that the Chakmas, who were residents of Arunachal Pradesh, were not able to make use of Section 6-A of the Act, which is a specific provision for the citizenship of those covered by the Assam Accord. The Chakmas are requesting citizenship in this case under Section 5(1) (a) of the Act, which has completely different requirements. This provision is applied to all non-citizens who wish to attain citizenship by registration¹⁰. The applications for the same have to be as per the Part II of Citizenship Rules, 1956. Such application has to be made to the Collector

⁸ *Louis De Raedt v Union of India*, (1991) 3 SCC 554

⁹ Citizenship (Amendment) Act, 1985, sec 6(A) (2)

¹⁰ Citizenship Act, 1955, sec 5(1) (a)

within whose jurisdiction the applicant is ordinarily resident¹¹. The authority to register a person as a citizen of India under Section 5(1) of the Act shall be an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Home Affairs¹². Every application is then transmitted to the Central Government¹³. Hence it becomes evident that the Collector has to merely receive the application for it to be forwarded to the Central Government. However, the rules also acknowledge the fact that the authority has the full right to dismiss or reject any of the applications. This creates an issue as since the applications are not forwarded by the Collector to the Central Government, the Central Government is not provided a chance to decide on whether citizenship of India should be provided or not. Therefore, the court suggests that the DC or Collector, who receives the application should forward the same to the Central Government to enable it to decide the request on merits. In this way, both the authorities, the Collector as well as the Central Government would be able to perform their duties.

JUDGEMENT/HELD

The petition was allowed and the writ of mandamus was exercised as the bench gave the respondents the following orders:-

- ❖ The State of Arunachal Pradesh will ensure that the life and liberty of each Chakma is protected and any eviction of them by AAPSU shall be repelled by the State. If additional force is required for the protection of the Chakmas, the State can ask for the same from the Union of India.
- ❖ Only by the law can the Chakmas be evicted otherwise they are to stay in the State with the guaranteed protection of their lives. Any quit notices and threats given by AAPSU that are detrimental to their life and liberty shall be looked into by the State following the law.
- ❖ The application submitted by the Chakmas under Section 5 of the Citizenship Act, 1955, for registration as citizens of India shall be entered in the register kept for that purpose and forwarded to the Central Government for its consideration following the law by the Collector or the DC who receives them under the relevant rule, with or

¹¹ Citizenship Rules, 1956, Part II, Rule 7

¹² Citizenship Rules, 1956, Part II, Rule 8

¹³ Citizenship Rules, 1956, Part II, Rule 9

without inquiry, as the case may be; even returned applications shall be called back or new ones shall be obtained from the persons concerned and processed and forwarded to the Central Government for consideration.

- ❖ While all the individual applications of Chakmas are still pending they can't be deprived of their occupation or stay because they are not citizens of India until the competent authority decides that.
- ❖ Within six weeks of this ruling, the state will deposit the sum of Rs. 10,000 towards the petition's cost in the NHRC office in New Delhi.

CONCLUSION

The judgment of NHRC v State of Arunachal Pradesh proved to be a significant case that dealt with the suffering and injustice that was being faced by the Chakmas of Arunachal Pradesh. The Supreme Court in this case upheld the protection of foreigners under Article 21. It confirmed that all people irrespective of their nationality are subject to live a life without any danger just like the majority. The Supreme Court bench condemned the inaction and tolerance of the State government towards the atrocities and threats caused by a private group AAPSU on the Chakmas residing in the Arunachal Pradesh refugee camps.

Another major development, in this case, was the misconception that the Chakmas could not apply for citizenship was resolved. The Chakmas were eligible to register and apply for citizenship under sec 5(1) (a) of the Citizenship Act, 1955 and the State authority had no right to delay the forwarding process of the applications.

The case also highlighted the role of the State in safeguarding the rights of the refugees and taking responsibility for their welfare and safety. In an unknown place, the only thing that the refugees look up to for their safety is the State authority which is legally bound to protect the people inhabiting its territory. The state can't discriminate between citizens and non-citizens when the question is about their right to life and liberty.