

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi

No. 23/ARUN/2003

Dated: 3rd March, 2004

ORDER

The Government of India, during the period 1964-69, settled some Chakma refugees from Bangladesh in Arunachal Pradesh. Their population has increased manifold. The Committee for Citizenship Rights of the Chakmas has been demanding conferment of Indian citizenship status and enrolment of their names in the electoral rolls. The said Committee has taken the matter to the National Human Rights Commission and the Supreme Court of India. The Hon'ble Supreme Court vide order dated 09-01-1996 directed the Government of India and the State Government of Arunachal Pradesh to settle the issue expeditiously and further directed, inter alia, that the State Government shall ensure that the life and personal liberty of each and every Chakma residing within the State of Arunachal Pradesh shall be protected and any attempt to forcibly evict or drive them out of the State by any organized group shall be repelled. In the meanwhile, the High Court of Delhi vide order dated 28-09-2000 held that such of the Chakmas who were born in India after their settlement in the State of Arunachal Pradesh but before 01-07-1987, became citizens of India by birth under section 3(1) (a) of the Citizenship Act even if their parents were not citizens of India at the time of their birth.

The Election Commission is concerned with the enrolment as electors of those Chakmas who have acquired Indian citizenship by birth as aforesaid and who are ordinarily resident in Arunachal Pradesh. Under the provisions of Article 326 of the Constitution read with section 19 of the Representation of the People Act, 1950, these Chakmas are constitutionally entitled to be registered as electors in the electoral rolls of the constituencies in which they are ordinarily resident in Arunachal Pradesh. These constituencies are 14-Doimukh (ST), 46-Chowkham (ST), 49-Bordumsa Diyum and 50-Miao (ST) assembly constituencies.

The Commission vide its orders dated 31st March, 2003 and 24th April, 2003 ordered a special summary revision of electoral rolls in Arunachal Pradesh with reference to 01-01-2003 as the qualifying date in the above-mentioned Assembly Constituencies. During the process of the said summary revision of electoral rolls, the concerned Electoral Registration Officers of the above said assembly constituencies accepted 323, 1164 and 10 claims of the Chakmas for inclusion in the electoral rolls of 46-Chowkham (ST), 49-Bordumsa Diyum and 50-Miao (ST) assembly constituencies respectively after due process. The Electoral Registration Officer of 14-Doimukh (ST) Assembly Constituency reported that he had rejected all the 426 applications for inclusion of names received by him by post from the Chakmas on the ground that those applications were received in bulk. Unfortunately, subsequently, the State Cabinet passed a resolution dated 14-05-2003, which directed that non Arunachaleese shall not be entitled to be enrolled in the electoral rolls in the State unless they possessed Inner Line Permits under the Bengal East Area and Frontier Regulation, 1873, having a minimum validity period of six months. Apparently influenced by the above said resolution of the State cabinet, the concerned Electoral Registration Officers rejected the said accepted claims. In view of the above, the Commission vide its d.o.letter dated 10-09-2003 addressed to the State Chief Minister brought it to his notice, inter-alia that the preparation and revision of electoral rolls was a constitutional duty conferred on the Commission by Article 324 (1) of the Constitution and the preparation and revision of electoral rolls were governed by the provisions of the Constitution and the Acts and the rules relating thereto and that the State cabinet resolution dated 14-05-2003 in so far as it related to the preparation and revision of electoral rolls was not in consonance with the provisions of the constitution and acts and rules governing the matter. The Commission also instructed the Chief Electoral Officer, Arunachal Pradesh to direct the Electoral Registration Officers of the above said three assembly constituencies to revive their earlier decisions to include the names of Chakmas who were found to be eligible, in the relevant electoral rolls. The State Chief Electoral Officer informed the Commission that the Electoral registration Officers of the said three assembly constituencies did not follow the Commission's instructions asking them to revive their earlier decisions to include the names of Chakmas found to be eligible, in the relevant electoral roll. The Chief Electoral Officer also reported that the Electoral Registration of 14-Doimukh (ST) Assembly Constituency had reported that he had not received any applications for inclusion of

names. But actually this report was not correct as it was earlier reported that he had received 426 applications for inclusion and these were rejected by him on the ground that these were received in bulk. In these compelling circumstances, the Commission, by its order dated 02-01-2004 declared that it shall not conduct any elections or carry out any election related work, including preparation and revision of electoral rolls, in these four assembly constituencies unless the State Cabinet withdrew or amended appropriately its resolution dated 14.05.2003 and created conditions conducive for the preparation and revision of accurate and defect-free electoral rolls as per the provisions of the Constitution and of the Acts and Rules governing the matter in these four Assembly Constituencies.

In the context of the forthcoming general election to the Lok Sabha, the Commission has reviewed the entire matter and took note of the fact that suspension of election related work as ordered by the Commission by its order dated 2nd January, 2004, in the above mentioned four Assembly Constituencies which spread over both the Parliamentary Constituencies in the State, would consequently deprive the entire electorate of the State of the opportunity to elect their representatives to the House of the People in the forthcoming general elections to the Lok Sabha along with other States.

Under Article 325 of the Constitution, it is laid down that no person shall be ineligible for inclusion in or claim to be included in any electoral roll for any constituency on grounds only of religion, race, castes, sex or any of them. It is evident that the names of the aforesaid eligible Chakmas in the State of Arunachal Pradesh have not been included in the electoral rolls mainly for the reason that they belong to the Chakma tribe/race, which is violative of the Constitutional mandate of Article 325.

Having regard to the above facts and circumstances the Election Commission, in exercise of its plenary powers conferred on it by Article 324 of the Constitution and in supersession of its order No. 23/Arun-AL/2003 dated 2.1.2004, hereby orders and directs that the names of 323, 1164 and 10 Chakmas of 46-Chowkham (ST), 49-Bordumsa Diyum and 50-Miao (ST) Assembly Constituencies respectively who were found to be eligible for inclusion in the respective electoral rolls by the concerned Electoral Registration Officers during the special summary revision of

electoral rolls w.r.t. 1.1.2003 as qualifying date, ordered by the Commission vide its orders dated 31st March, 2003 and 24th April, 2003 and prior to the resolution dated 14-05-2003 of the State cabinet, shall be deemed to have been included in the electoral rolls of the respective Assembly Constituencies by virtue of the provisions of Articles 325 and 326 of the Constitution and Section 19 of the Representation of the People Act, 1950 . A complete list of the names of the said 1497 eligible electors is given in Annexure-I hereto. The Electoral registration Officers of the above mentioned three Assembly Constituencies shall forthwith publish the electoral rolls by including the names of the aforesaid 1497 eligible electors in the relevant parts of the electoral rolls of the respective Assembly Constituencies and they shall be eligible to cast their votes under Section 62 of the Representation of the People Act, 1951 in the ensuing elections to the House of the People. The Electoral Registration Officer for 14-Doimukh Assembly Constituency shall also publish the electoral rolls as finalized by him, forthwith.

(N. GOPALASWAMI)
ELECTION COMMISSIONER

(B.B. TANDON)
ELECTION COMMISSIONER

(T.S. KRISHNAMURTHY)
CHIEF ELECTION COMMISSIONER