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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 14.07.2025

+ LPA 1231/2024

UNION OF INDIA & ORS.

.....Appellant

Through: Ms. Nidhi Raman, CGSC with Mr. Abhigyan Siddhant, GP and Mr. Arnav Mittal, Advocate for UOI.

versus

RACHITA FRANCIS XAVIER

.....Respondent

Through: Mr. Bharadwaj S. Iyengar, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

DEVENDRA KUMAR UPADHYAYA, C.J. (ORAL)

1. Heard learned counsel for the parties and perused the records available before us on this intra-court appeal filed under Clause X of the Letters Patent with the limited prayer to set aside the judgment dated 15.05.2024, passed by learned single judge in *W.P.(C) 1754/2020* to the extent the judgment holds the respondent not to be an “illegal migrant” and to be a “person of Indian Origin”. More specifically, the prayer made in this appeal is to set aside the observations made in paragraphs no.29, 30, 41 and 52 of the judgment dated 15.05.2024 passed by the learned Single Judge.

2. It has been argued on behalf of the appellants that observations made in paragraph no.29 of the judgment passed by the learned Single Judge to



the effect that the term “*illegal migrant*” would not apply to the respondent, is not sustainable, for the reason that facts of the present case clearly establish that the respondent is an “illegal migrant” as per definition of the said expression occurring in Section 2(1)(b) of the Citizenship Act, 1955 (*hereinafter referred to as the ‘Citizenship Act’*).

3. Further submission of the learned counsel representing the appellants is that finding recorded by learned Single Judge in the impugned judgment holding that *the respondent would be a “person of Indian Origin”*, is also erroneous as the said finding clearly runs contrary to the provisions contained in Explanation 2 appended to Section 5(1)(g) of the Citizenship Act. His submission is that Explanation 2 has wrongly been interpreted, and such interpretation by the learned Single Judge is in contravention of the judgment of the Hon’ble Supreme Court in the case of ***Union of India v. Pranav Srinivasan***, 2024 SCC OnLine SC 2920.

4. Our attention has been drawn to paragraph no.18 and 21 of **Pranav Srinivasan (supra)** to emphasize that a person shall be deemed to be of Indian Origin if: (i) he or either of his parents were born in undivided India or (ii) in such other territory which is not a part of undivided India but became part of India after 15.08.1947. It has been argued that contrary to the said interpretation given by the Hon’ble Supreme Court in **Pranav Srinivasan (supra)**, the learned Single Judge has opined that since the mother of the respondent was born in India after independence, the respondent would be a person of Indian Origin. Such an interpretation, according to learned counsel for the appellant, is based on complete misreading of the provisions contained in Explanation 2 appended to Section 5(1)(g) of the Citizenship Act which provides that the person is to be



deemed to be of Indian Origin only in two following conditions: (i) if the person or either of his parents was born in undivided India and (ii) the person or either of his parents was born in such territory which became part of India after 15.08.1947.

5. It is the argument of the learned counsel for the appellant that the term “undivided India” is defined in Section 2(1)(h) of the Citizenship Act, according to which, “undivided India” means India as defined in the Government of India Act, 1935 (*hereinafter referred to as the ‘Act, 1935’*) and therefore, any person born after independence in independent India would not be covered by the term “person of Indian Origin” as per Explanation 2 appended to Section 5(1)(g) of the Citizenship Act.

6. On the other hand, learned counsel for the respondent has stated that such issues which have been sought to be raised in the instant Letters Patent Appeal, do not require any adjudication for the reason that in terms of the directions issued by the learned single judge *vide* judgment dated 15.05.2024, which is under challenge herein, the case of the respondent was considered for grant of citizenship by registration under Section 5(4) of the Citizenship Act, and she accordingly, has been granted citizenship by registration.

7. Having argued as above, learned counsel for the respondent, however, could not make any submission contrary to the interpretation given by the Hon’ble Supreme Court in **Pranav Srinivasan (supra)** to the term “person of Indian Origin”.

8. We have considered the respective submissions made by learned counsel for the parties.



9. So far as the submissions made by learned counsel appearing for the appellants about the observations made in paragraph no.29 and 30 of the impugned judgment are concerned, we may only observe that the observations to the effect that *the term “illegal migrant” by itself would not apply to the respondent*, are in relation to the peculiar facts of the case and accordingly, the observations or the findings are thus to be read *in personam* and not *in rem*.

10. The facts of the case have been discussed by the learned Single Judge, which are rather admitted by the parties. Learned Single Judge has made the said observations in paragraph no.29 and resultantly in paragraph no.30 of the impugned judgment, which are in the peculiar facts of the case and the facts are that though the respondent was born in India but whose parents were not Indian Citizens at the time of her birth, having acquired the citizenship of United States of America on 28.09.2001 and 28.07.2005 respectively. The respondent at the relevant point of time was a minor and was born in India to her parents who were Overseas Citizens of India Cardholders (OCI) within the meaning of Section 7A of the Citizenship Act. It is in these circumstances that the learned Single Judge has held that since the term “migrant” envisages movement from one country to another of a foreigner, the respondent could not be termed to be “migrant” for the reason that she was born in India and had not moved to India from any other country. The said finding has been recorded in paragraph no.29 and 30 of the judgment by learned Single Judge also keeping in view the fact that the status of parents of the respondent as OCI cardholders is not denied and it is also not denied that they were legally residing in India as OCI cardholders at the time of birth of the respondent.



11. In view of the aforesaid, we only clarify that observations made and findings recorded in paragraph no.29 and 30 of the judgment rendered by the learned Single Judge are to be read specifically in the facts of the case and therefore, the same are to be treated as having been rendered *in personam* and not *in rem*.

12. As regards the observations made and findings recorded in paragraph no.41 and 52 of the judgment of learned Single Judge to the effect that the respondent qualified as a “person of Indian Origin” are concerned, in our opinion, the said finding is based on misreading of the provisions embodied in Explanation 2 appended to Section 5(1)(g) of the Citizenship Act. Section 5 of the Citizenship Act is quoted here under:-

“5. Citizenship by registration.—*[(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—*

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and 3 [is ordinarily resident in India for twelve months] immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an [Overseas Citizen of India Cardholder] for five years, and who [is ordinarily resident in India for twelve months] before making an application for registration.



Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if—

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.]

[(1A) The Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, specified in clauses (f) and (g) and clause (i) of Explanation 1 of sub-section (1), up to a maximum of thirty days which may be in different breaks.]

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

[(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption.].”

13. A perusal of the Explanation 2 as extracted herein above, would clearly reveal that a person can be said to be of “Indian Origin” in two circumstances, namely, (i) if the person or either of his parents was born in undivided India or (ii) the person or either of his parents was born in such



other territory which came to the folds of India after 15.08.1947. The term undivided India is defined in Section 2(1)(h) of the Citizenship Act which is extracted herein below:-

“(h) “undivided India” means India as defined in the Government of India Act, 1935, as originally enacted.”

14. Accordingly, Explanation 2, in our opinion, provides that any person shall be deemed to be a person of “Indian Origin” if the person or either of his parents were born in undivided India as defined in the Act, 1935, as originally enacted. It would thus mean that to acquire the status of a person of “Indian Origin”, the person concerned or either of his parents would have born in India before 15.08.1947 and not thereafter. A person who was born in a territory which became part of India after 15.08.1947, will also be deemed to be a person of “Indian Origin”.

15. In a situation where either of the parents of a person was born in a territory which became part of India after 15.08.1947 will also be deemed to be person of “Indian Origin”; meaning thereby, the person or either of his parents ought to have born in a territory which came to the fold of India after 15.08.1947. Explanation 2 appended to Section 5(1)(g) of the Citizenship Act would not cover a person to be deemed to be of “Indian Origin” if he or either of his parents was born in India on or after 15.08.1947 or in a territory which did not become part of India after 15.08.1947.

16. The aforesaid finding recorded by us is supported by the judgment of the Hon’ble Supreme Court in the case of **Pranav Srinivasan (supra)** wherein, it has clearly been held that if “Undivided India” is read as India as on or after 15.08.1947, the same would be doing violence to the plain language of Explanation 2.



17. The Hon'ble Supreme Court arrived at the said finding by relying upon the fundamental rule of construction of a statute, according to which, the words and phrases applied by a legislature are to be given their ordinary meaning and should be construed in accordance with the rules of grammar. Relevant extract of paragraph no.18 of **Pranav Srinivasan (supra)** is quoted herein below:-

“18.

For applicability of clause (b) of sub-section (1) of Section 5 of the 1955 Act, Pranav will have to establish that he is a person of Indian origin who is an ordinary resident in any country or place outside undivided India. In view of explanation 2 to Section 5, a person shall be deemed to be of Indian origin if (i) he or either of his parents were born in undivided India or (ii) in any such other territory which was not part of undivided India, but became part of India after 15th August 1947. There is no third category mentioned in the explanation. If undivided India were to include India after independence, the legislature would not have included the category of the person or either of his parents being born in such other territory which became part of India after the 15th August 1947. Section 2(h) of the 1955 Act provides that “undivided India” means India as defined in the 1935 Act. If we read “undivided India” as India as on or after 15th August 1947, we would be doing violence to the plain language of the Explanation. We cannot read something that is not in the provision, especially when there is no ambiguity in the provision. Therefore, we cannot read Explanation 2 the way the learned senior counsel of Pranav wants us to read. Pranav and both his parents were not born in the undivided India. His parents were born after independence in independent India. They were not born in any part of undivided India or any territory that became part of India after 15th August 1947. Therefore, Section 5(1)(b) of the 1955 Act has no application.”

18. In view of the aforesaid, we are of an unambiguous opinion that the observations made by the learned Single Judge in paragraphs no.41 and 52 that *the respondent qualified to be a person of “Indian Origin”* is erroneous, and accordingly, the instant intra-court appeal deserves to be allowed to the limited extent. We, thus, set aside the observations made and findings recorded in paragraph no. 41 and 52 of the judgment dated 15.05.2024



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passed by the learned Single Judge whereby it has been held *that the respondent would be a person of “Indian Origin”*.

19. The appeal thus stands disposed of in the aforesaid terms.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

JULY 14, 2025/MJ