



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.2901 OF 2025 (Filing No.)

Ms Xami Dha Tirakita Kaye
(Minor, Born: 24.01.2018), Age 07,
D/o Mr Stefan Felix Kaye & Ms. Ritika Kaye,
Residing at: H.No.1695/1, Anjuna Panchayat,
Gumal Waddo, Anjuna, North Goa,
Goa 403509

(Through her natural guardians and parents,
Mr Stefan Felix Kaye and Ms Ritika Kaye)

...Petitioner

Versus

1. Union of India,
Through its Secretary,
The Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi – 110011
2. The Regional Passport Office, Panaji.
Passport Bhavan, EDC Complex, Patto,
Panaji – 403001, Goa.
(Through its Regional Passport Officer)
3. The Chief Passport Officer,
Joint Secretary (PSP) & Chief Passport
Officer,
PSP Division, Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi -11001
4. The Foreigners Regional Registration
Office (FRRO), Delhi
East Block –VIII, Sector-1, R. K. Puram,
New Delhi -110066

(Through its Foreigners Regional
Registration Officer)

5. Regional Passport Officer, Delhi,
Bhikaji Cama Place,
R. K. Puram, New Delhi -110066

6. State of Goa,
Through Chief Secretary,
Secretariat, Porvorim Goa.

...Respondents

Mr Ram Kakkar, Advocate for the Petitioner.

Mr Raviraj Chodankar, Central Government Standing Counsel for
Respondent Nos.1 to 5.

Mr Ajay Borkar, Additional Government Advocate for Respondent
No.6.

**CORAM: SARANG V. KOTWAL &
ASHISH S. CHAVAN, JJ**

DATED : 11th DECEMBER 2025

JUDGMENT (Per Sarang V. Kotwal, J.)

1. Heard Mr Ram Kakkar, learned counsel for the Petitioner, Mr Raviraj Chodankar, learned Central Government Standing Counsel for Respondent Nos.1 to 5 and Mr Ajay Borkar, learned Additional Government Advocate for Respondent No.6.

2. With the consent of all the learned counsel, the petition is decided finally at the admission stage. Hence, Rule. Rule is made returnable forthwith.

3. A seven year old girl child is seeking the intervention of this Court to protect her citizenship rights. The petition is filed by a seven year old Petitioner through her natural parents. The Authorities have refused to grant her an Indian passport. Respondent No.1 is the Union of India, Respondent No.2 is the Regional Passport Office, Panaji, Respondent No.3 is the Chief Passport Officer, PSP Division, New Delhi, Respondent No.4 is the Foreigners Regional Registration Office (FRRO) Delhi, Respondent No.5 is the Regional Passport Officer, Delhi and Respondent No.6 is the State of Goa.

4. The Petitioner's father is a British National. It is stated in the petition that he arrived in India in the year 2006 on an employment visa, which was extended three times i.e., in 2007, 2008 and 2009. On 26.12.2009, he married the Petitioner's mother in New Delhi.

5. The Petitioner's father was arrested in 2011 by the Delhi Police for overstaying. An FIR was registered against him for violation of Section 14 of the Foreigners Act, 1946. He was convicted by the Magistrate's Court in Delhi on 02.07.2016 for the offence punishable under Section 14 of the Foreigners Act, 1946. He was sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.10,000/-.

6. The Petitioner's father filed an appeal before the Sessions Court. The Appellate Court vide judgment and order dated 21.04.2017, upheld the conviction and modified the sentence to the period of 20 days already undergone by the Petitioner's father in custody. At the same time, the Appellate Court ordered the deportation of the Petitioner's father.

7. The Petitioner's father approached the Delhi High Court vide Writ Petition (Cr.) No.1497 of 2017 challenging his deportation. Vide order dated 13.09.2017, a learned Single Judge Bench of Delhi High Court observed that the Petitioner (in that petition) had entered India on a valid visa, but his visa had expired. He married a person of Indian origin. She at the time of passing of the order on 18.05.2017, was in the family way. Considering that aspect, the order of the Trial Court directing his deportation within a period of 30 days was stayed by the Delhi High Court. It was further observed in the order dated 13.09.2017, passed in Writ Petition (Cr.) No.1497 of 2017 by the Delhi High Court that the pregnancy of the Petitioner's mother was terminated, but again the Petitioner's mother became pregnant. It was observed that the case involved the future of a person of Indian origin. The Delhi High Court expected the Ministry of Home Affairs, Foreign Division, to consider the representation sympathetically, as both the spouses were in the field of arts, and they had not posed any threat to National security.

Observing thus, the interim order was extended. The directions were issued to consider the representation. The said petition was disposed of. The subsequent developments show that the Petitioner's father is still fighting to get OCI status visa from the Indian Authorities.

8. In the meantime, the Petitioner was born in India on 24.01.2018. There is no dispute regarding the date of birth. In any case, the Petitioner has annexed her birth certificate issued by the South Delhi Municipal Corporation at Exhibit - A to this petition.

9. The main contention of the Petitioner is that she is entitled for Indian citizenship under the provisions of Section 3(1)(c)(ii) of The Citizenship Act, 1955. She was, in fact granted an Indian Passport No. S1442363 on 06.04.2018 with a validity date until 05.04.2023. However, subsequently, the passport was revoked on the ground that it was obtained by suppressing material information.

10. It is further stated in the petition that the Petitioner's parents moved to Goa from New Delhi in and around December 2021 and since then they have been residing in Goa. Thus, the Petitioner is residing in India since her birth till today for about almost eight years. In this background, the Petitioner made an application for new passport. It was rejected by Respondent No.2 vide

communication dated 09.07.2025. The Petitioner then preferred an appeal before the Appellate Authority i.e. Respondent No.3. But the Appellate Authority rejected her appeal and as the matter stands today, the Petitioner has not been issued Indian Passport and consequently, she is not accepted as an Indian citizen. The Petitioner has challenged both these orders and also the communication dated 08.10.2025 issued by Respondent No.2 informing her about the rejection of application for passport.

11. The main crux of the argument of the learned counsel for the Petitioner was based on the provisions of Section 3(1)(c)(ii) of The Citizenship Act, 1955. He submitted that the relevant date for consideration of granting citizenship is the date of birth. The Authorities were required to see whether on that particular date the Petitioner's father was an illegal migrant or not. It is not in dispute that the Petitioner's mother is a citizen of India. The only question would be whether on that date the Petitioner's father was an illegal migrant or not. In that behalf, the learned counsel for the Petitioner referred to the definition of 'illegal migrant' provided under Section 2(1)(b) of the said Act. He also relied on the stay visa issued to the Petitioner's father on 03.11.2017 which clearly mentioned that his RC/RP/visa was extended up to 31.03.2018. He also relied on the communication dated 18.10.2017 sent by Under Secretary (Visa) addressed to FRRO, Delhi i.e. Respondent No.4. It was mentioned

in the said communication that it was decided to allow the Petitioner's father to stay in India till 31.03.2018 without regularization of his overstay period.

12. The learned counsel for the Petitioner submitted that between the period of September 2017 till 31.03.2018, the Petitioner's father was not an illegal migrant. The Petitioner was born on 24.01.2018 and therefore, on that particular date, definitely, the Petitioner's father was not an illegal migrant. Her mother was an Indian citizen and therefore, she was entitled to be declared Indian citizen and therefore, she was entitled to be issued an Indian passport.

13. The learned counsel for the Petitioner submitted that the Authorities could have approached this issue on humane grounds. The Petitioner has been in India since January 2018 till today. Her father was unable to leave the country inspite of the fact that the Petitioner's recently widowed paternal grandmother, was staying alone in the United Kingdom. She is about 90 years of age. Because of this legal issue, the Petitioner's father is unable to visit the United Kingdom under the apprehension that he may never get to visit India to see his daughter again. He submitted that looking at this issue from all angles, this Court should step in to help her family.

14. As against these submissions, the learned Standing Counsel for the Union of India representing Respondent Nos.1 to 5 relied

on the affidavit filed by Immigration Officer, Mumbai, having office at FRRO, Mumbai. He submitted that the Petitioner has not approached this Court with clean hands. The earlier passport issued to the Petitioner was obtained by suppressing material fact that her father was an illegal migrant. The issuance of the first passport does not entitle the Petitioner for getting the citizenship or a fresh passport. The learned counsel further submitted that the Petitioner's father was convicted by a Competent Court. His conviction was confirmed by the Appellate Court. Therefore, it is proved that he had overstayed in India without any valid documents. It is further submitted that the Petitioner's father failed to inform the FRRO Delhi or the local Registration Officer in Goa about his change of residence. According to the learned counsel, since the Petitioner's father was an illegal migrant, the requirements of Section 3(1)(c) (ii) of the Citizenship Act, disentitled her to obtain the citizenship of India. The learned counsel further submitted that the impugned orders passed by the Respondent Nos.2 and 3 are well reasoned orders. They are passed in accordance with law and therefore, this Court may not entertain this petition. It is further stated in the affidavit that the Petitioner's father was in India without any valid travel document for two and half years between January 2022 to September 2024. On all these grounds, the learned counsel for

Respondent Nos.1 to 5 opposed the grant of any relief in this petition.

We have considered these submissions.

15. The relevant provision for the purpose of deciding this petition is Section 3(1)(c)(ii) of the Citizenship Act, 1955. Section 3 of the Citizenship Act, 1955 reads thus:-

“[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 1st day of July, 1987;

(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;

(c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where-

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth-

(a) either his father or mother possesses such immunity from suits and legal process as is

accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.]”

16. The crucial aspect is applicability of Section 3(1)(c)(ii) of the said Act. The said provision lays down that one of the parents was required to be a citizen of India and the other parent should not be an illegal migrant at the time of the birth of such person. Then such person can be a citizen of India by birth. In the present case, it is not in dispute that the Petitioner’s mother is a citizen of India. The only debatable question raised in this petition is whether the Petitioner’s father was an illegal migrant at the time of the Petitioner’s birth i.e. on 24.01.2018.

17. The illegal migrant is defined under Section 2(1)(b) of the said Act which reads thus:-

“2. Interpretation.- (1) In this Act, unless the context otherwise requires,-

(a).....

(b) “illegal migrant” means a foreigner who has entered into India-

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;]”

Therefore, the question remains as to whether on 24.01.2018, the Petitioner’s father was an illegal migrant.

18. As rightly submitted by the learned counsel for the Petitioner that the dates before 24.01.2018 and the dates after 24.01.2018 are not really material but the crucial date is 24.01.2018. It has to be seen whether on that date the Petitioner’s father was an illegal migrant.

19. In that context, the learned counsel for the Petitioner has rightly relied on the stay visa dated 03.11.2017, a copy of which is annexed as Exhibit - C to this petition. It is specifically mentioned in the stay visa that the stay of the Petitioner’s father was extended up to 31.03.2018. Thus, from 03.11.2017 to 31.03.2018, he was residing in India with a valid document. Moreover, the affidavit in reply submitted on behalf of the Respondents also has a copy of the communication dated 18.10.2017 sent by Under Secretary (Visa) addressed to the FRRO, Delhi i.e. Respondent No.4, which we have

referred to herein above. The said letter is important. The relevant text of that letter is as follows: -

“Sir,

.....

.....

2. *The matter has been examined in this Ministry. It has been decided to allow the foreigner permission to stay in India till March 31, 2018 without regularization of his overstay period. The foreigner may be advised to leave the country after March 31, 2018. Necessary endorsement may please be made on his passport. After confirmation of foreigner’s exit, his name may be placed in BL.*

3. *It is also requested to keep a discreet watch on the foreigner and send a detailed report to this Ministry at the earliest especially on the fact whether the foreigner is staying with her Indian spouse.*

4. *This issue with the approval of competent authority.”*

20. The learned counsel for the Respondents tried to contend that the said letter mentions that the Petitioner’s father was permitted to stay in India till 31.03.2018, but his overstay period was not regularized, and therefore, he has to be treated as an illegal migrant. We are unable to agree with this submission. We have already referred to the definition of an ‘illegal migrant’. From that context, it is quite clear that he was permitted to stay in India based on a

valid document issued by a competent authority. Therefore, there is no doubt in our mind that on 24.01.2018, the Petitioner's father was not an illegal migrant. In this view of the matter, in our opinion, the Petitioner satisfies the requirement of Section 3(1)(c)(ii) of the Citizenship Act, 1955, and hence she is entitled to get citizenship of India. We make it clear that we are only dealing with the issue of citizenship and issuance of a passport of the Petitioner and we have not made any comments as far as the Petitioner's father's pending litigations are concerned. Therefore, we are inclined to allow this petition in the following terms: -

- (i) The orders issued by Respondent No.2 – the Regional Passport Office, Panaji, dated 09.07.2025 and 08.10.2025, refusing the passport services in favour of the Petitioner are quashed and set aside.
- (ii) The order dated 06.10.2025 issued by Respondent No.3 – the Chief Passport Officer, PSP Division, New Delhi, is quashed and set aside.
- (iii) The Authorities shall process the Petitioner's application for the issuance of a passport in the light of the observations made in this order. If necessary, the Petitioner is permitted to make a fresh application for issuance of passport.

- (iv) It is made clear that the revocation of the first passport of the Petitioner shall not come in the way of the Petitioner in any manner in the future.

21. The rule is made absolute in the aforesaid terms.

The petition is disposed of.

ASHISH S. CHAVAN, J

SARANG V. KOTWAL, J