

Union of India
v.
Bahareh Bakshi

(Civil Appeal No(S).4887-4888/2024)

22 August 2024

[Hrishikesh Roy, Sudhanshu Dhulia and S.V.N. Bhatti, JJ.]

Issue for Consideration

Issue arose as regards to the presence of the estranged husband, if mandatory to process an application by the wife-foreign spouse of a citizen of India for overseas Citizen of India Card, u/s.7-A of the Citizenship Act, 1955.

Headnotes[†]

Citizenship Act, 1955 – s.7A(1) – Registration of Overseas Citizen of India Cardholder – Application for Overseas Citizen of India (OCI) Card by wife-foreign spouse of a citizen of India – Presence of the estranged husband, if mandatory to process the application u/s.7A:

Held: Presence of the spouse of the applicant either physically or through the virtual mode is mandatory for effective consideration of the application for an OCI Card – Central Government is empowered to register the foreign spouse of a citizen of India as an OCI holder subject to such conditions, restrictions and manner as may be prescribed – Prior security clearance by the competent authority for eligibility is also required – Act clearly allows for supplementary procedures, such as a personal interview of the foreign applicant and his/her spouse separately as specified in the Visa Manual as well as the Checklist – In the absence of any challenge to the visa manual or the checklist, and ignoring the procedure in place, the High Court erred in granting the relief of dispensing with the requirement of physical/virtual presence of the spouse as also was unjustified in holding that mandating the physical presence of the husband is arbitrary – Having considered the process for verifying the genuineness, the direction issued in the impugned judgment to dispense with the presence of the applicant's spouse, has no legal basis – Moreover, apart from the physical/virtual presence of the spouse other conditions are also to be satisfied by an applicant

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as is provided under the Act, the checklist and the Visa Manual for which even a declaration by the husband may be necessary – Impugned judgments of the Single Judge and the Division Bench of the High Court unsustainable and set aside. [Paras 14-18]

List of Acts

Citizenship Act, 1955; Visa Manual, 2021; Code of Criminal Procedure, 1973.

List of Keywords

Overseas Citizen of India; OCI holder; Application for OCI Card; Prior security clearance; Checklist issued for verification of applications seeking OCI category card; Presence of couple; Presence of the estranged husband; Personal interview; Genuineness of the marital status; Supplementary procedures; Interview; Visa Manual as well as Checklist; Dispensing with the requirement of physical/virtual presence of the spouse; Special circumstance.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4887-4888 of 2024

From the Judgment and Order dated 25.03.2022 and 22.07.2021 of the High Court of Delhi at New Delhi in LPA NO. 225 of 2022 and WP(C) No. 10807 of 2020 respectively

Appearances for Parties

Mrs. Aishwarya Bhati, A.S.G., B K Satija, Merusagar Samantaray, Mrs. Savita Singh, Ishaan Sharma, Parantap Singh, Mriyank Pathak, Arvind Kumar Sharma, Akshja Singh, Advs. for the Appellant.

Ankur Mahindro, Rohan Taneja, Mohit Dagar, Aditya Kapur, Soumil Gonsalves, Ankush Satija, Rohit Bishnoi, Ms. Vaishali S, Ms. Shubhangi Jain, Ms. Sugandha Anand, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Judgment**

1. Heard Ms. Aishwarya Bhati, learned Additional Solicitor General appearing for the appellant – Union of India. Also heard Mr. Ankur Mahindro, learned counsel appearing for the respondent.

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2. The consideration to be made in this matter is whether the presence of the estranged husband is mandatory to process an application for Overseas Citizen of India (OCI) Card, under Section 7-A of the Citizenship Act, 1955. The respondent had filed the WP(C) No.10807/2020 in the High Court of Delhi for dispensing with the presence of the husband of the respondent. The learned Single Judge dispensed with the presence of the husband of respondent and this view was affirmed by the learned Division Bench under the impugned order dated 25.03.2022. Hence the Civil Appeal at the instance of Union of India.
3. In the Writ Petition, the respondent claimed that she is an Iranian citizen and is married to Mr. Paul Fel-El-Dingo D'Silva, an Indian citizen. He had converted to Islam, on 30.11.2008 and thereafter the marriage was solemnized in Dubai, UAE on 13.05.2009. The marriage certificate issued to the couple was translated by an Authorised Translator and certified by the Consulate General of India at Dubai, UAE. However, the respondent claims that disputes arose between Mr. Paul and her, shortly after they consummated the marriage, which led to her initial return to Iran and her subsequent relocation to Bengaluru at his insistence. It is the respondent's case that Mr. Paul claimed to have financial difficulties which motivated her to pursue her Postgraduate degree in Biotechnology in Bengaluru and her Doctorate from Mysore University to contribute to the family income. However, in the meanwhile, the relationship soured between the respondent and Mr. Paul and he left her in Bengaluru, to reside with his family in Goa. Consequently, the respondent instituted a maintenance petition under *Section 125 of the Criminal Procedure Code, 1973*, against her estranged spouse, before the learned Family Court in Bengaluru and was awarded a monthly maintenance amount of Rs.15,000/-. Mr. Paul appealed against this order before the High Court of Karnataka, but was unsuccessful. On 17.11.2020, the respondent applied on the website for Overseas Citizen of India(OCI) Card under Section 7(1)(d) of the *Citizenship Act, 1955* and generated her application for an OCI card on the basis of her marriage to Mr. Paul, and went to submit it to the local FRRO in Bengaluru on 4.12.2020. However, the officials refused to accept the form stating that the presence of Mr. Paul was necessary for processing her application for registration. It is in this context that the petition before the Delhi High Court came to be filed. The Respondent is aggrieved by the Appellant's

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insistence on the physical/virtual presence of her estranged spouse, who is admittedly an Indian citizen, for the purpose of processing her OCI card application.

4. The Single Judge of the Delhi High Court allowed the writ petition of the Respondent and directed the Union of India to accept her Overseas Citizen of India(OCI) Card without the presence of her spouse. It was held that it is not mandatory u/Clause 21.2.5(vi) of Chapter 21 of the Visa Manual for personal interview to be conducted for the spouse by the Indian Mission/Post/FRRO. In the absence of any rule or guideline mandating the presence of both spouses, the checklist should not have been formulated in such a manner so as to impose the condition.
5. On 25.3.2022, the Division Bench of the Delhi High Court upheld the order of the Single Bench with a clarification that there would be no bar on the Union of India from carrying out investigation on the claim of the respondent in her application for the Overseas Citizen of India(OCI) Card. It was noted that the object of the enquiry is to be satisfied that the application is genuine and not founded upon a false claim for marriage. There could be cases where the Indian spouse may die or go missing. In such situations, it may not be possible to produce the Indian spouse. The Division Bench was of the view that insisting on producing the husband at the time of personal interview was clearly arbitrary and is only one of the modes by which genuineness of the claim can be satisfied.
6. Before this Court, it was projected from the side of the appellant that the checklist for considering an OCI card requires both the spouses to be present for an interview with the authorities. The Visa Manual was also referred to in the course of the proceeding to argue that the presence (physical or virtual) of both the applicants is essential. The Counsel for the respondent however contended that on account of the estranged relationship with her husband, the Indian citizen spouse is not available to appear before the authorities either physically or by virtual mode in support of her application for OCI card. It was further contended that since various legal proceedings are pending with the Indian husband, he is unlikely to appear before the authorities and because of the impossibility, the application be processed without insisting for the presence of the applicant's spouse at the time of the personal interview.

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7. In support of their respective contentions, both sides have relied on sub-Clause (d) Section 7A of the *Citizenship Act, 1955*, which requires that the applicant for OCI card must have solemnized a registered marriage with the Indian citizen and the marriage ought to have subsisted for not less than two years immediately preceding the presentation of the application. It was argued that the High Court failed to note that *Section 7(1)(d)* and *Section 7(1)(f)* of the *Citizenship Act, 1955* and para 21.1.4 and 21.2.5(vi) of the Visa Manual read together, not only require the genuineness of marriage but also whether there is a re-marriage or death of spouse etc. The Visa Manual, 2021 prescribes that it is important to cross-question the spouses separately to ascertain the genuineness of marriage. On the other hand, the Learned Counsel for the Respondent would argue that under certain conditions, it may not be necessary to produce the spouse. It is argued that it is only to ascertain the genuineness of marriage that physical/virtual present may be needed.
8. The statutory provisions concerning Overseas Citizen of India(OCI) Card are contained in Section 7A, 7B,7C and 7D of the *Citizenship Amendment Act, 1955*(as amended in 2015). Though OCI Card holders remain citizens of their country, they enjoy certain privileges such as multiple-entry lifelong visa for visiting India for any purpose, exemption from registrations with the FRRO and FRO, parity with Non-Residential Indians(NRIs) in some aspects etc. Section 7A pertains to the ‘Registration of Overseas Citizen of India Cardholder’ whereas Section 7B covers the conferment of certain limited rights on OCI Card Holders. Section 7C deals with ‘Renunciation’ whereas Section 7D contains provisions regarding the ‘Cancellation of Registration’ as OCI Cardholder. *Section 7A(1)(d)* which is relevant for our purpose, reads as under:

“7A. Registration of Overseas Citizen of India Cardholder-

(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder—

(a)

(b)

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(c)

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India”

9. It is essential to note that the Central Government is empowered to register the foreign spouse of a citizen of India as an OCI holder “subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf”. The proviso to Clause 7A(1)(d) also provides for ‘a prior security clearance’ by the competent authority for eligibility.
10. Such special privilege of an OCI Card may be withdrawn under Section 7D(f) which reads thus:

“7D. The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A, if it is satisfied that:

..... ..

(f) the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A,—

- (i) has been dissolved by a competent court of law or otherwise; or
- (ii) has not been dissolved but, during the subsistence of such marriage, he has solemnized marriage with any other person.”

11. The relevant clause of the checklist issued for verification of applications seeking OCI category card which was part of the record before the High Court reads thus:-

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“In case of marriage to Indian national, registered marriage certificate and Spouse valid Indian Passport photo page and Address page (holding Indian citizenship. (Marriage certificates issued Outside India is to be affixed with Apostille or endorsed by the concerned Indian Mission abroad). On the day of submission of application the couple must present. (only those whose marriage is registered and has subsisted for a continuous period of not less than two years are eligible for OCI on the basis of marriage to Indian).”

12. The above would indicate that on the day of submission of application, the couple must be present. For appreciating the requirement of physical/virtual presence projected by the learned ASG, we have also perused the Visa Manual issued by the Ministry of Home Affairs and the relevant Clauses in Chapter 21 of the Visa Manual have been considered.

13. Para 21.25(vi) of the Visa Manual provides thus:

“With a view to curb practice of entering into marriage of convenience just to obtain OCI cards by foreign nationals, a mandatory verification step of personal interview (either physical or through video conference) of all OCI applicants who apply for registration as OCI cardholder under section 7A(1)(d) of Citizenship Act, 1955 (i.e. spouse basis) has been introduced. This personal interview shall be conducted by the Indian Mission/Post/FRRO concerned at the time of document verification stage itself and the OCI application on spouse basis shall be acknowledged on the online system only after the personal interview has been held and the Indian Mission/Post/FRRO concerned have satisfied themselves about the suitability of the applicant for the registration as OCI cardholder. *A report on the personal interview along with recommendation of the Indian Mission/Post/FRRO concerned shall also be uploaded on the online system.* During such personal interview, the Indian Mission/ Post/ FRRO *may put random questions to the foreign applicant and his/her spouse separately to elicit information which may help in ascertaining the*

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genuineness of the marital status of the applicant. The information provided during the personal interview maybe tallied with the information, if any, provided in the application form with reference to similar questions”.

[emphasis supplied]

14. Other provisions of the Visa Manual were also brought to our notice which, inter alia, provided that as a further step, a declaration should be given by the husband that in case of death or divorce, he would surrender the OCI Card to the authorities. As noted above, during the personal interview of the applicant, the concerned Officer may put random questions to the foreign applicant and his/her spouse separately, to elicit information which may help in ascertaining the genuineness of the marital status of the applicant. This suggests that the presence of the spouse of the applicant either physically or through the virtual mode is mandatory for effective consideration of the application for an OCI Card.
15. The Learned Counsel for the Respondent argued that the Visa Manual or even the checklist is only a delegated legislation and there is no such condition in *Section 7A(d)* of the *Citizenship Act, 1955* mandating an interview. We are disinclined to accept this submission as *Section 7A(1)* specifically notes that the registration of OCI Card by the Central Government is ‘subject to such conditions, restrictions and manner as may be prescribed’. Therefore, the Act clearly allows for supplementary procedures, such as an interview as specified in the Visa Manual as well as the Checklist. In the absence of any challenge to the visa manual or the checklist, and ignoring the procedure in place, the High Court in the impugned judgment erred in granting the relief of dispensing with the requirement of physical/virtual presence of the spouse. This was done on the basis that there are other modes by which the concerned authority can satisfy themselves on the genuineness of the application.
16. If the above procedure dispensing with the presence of the spouse for considering the respondent’s application is permitted to be adopted, it will firstly be a departure from the notified procedure. Moreover, the entire burden of verification would completely shift to the authorities. For the OCI card, it is for the applicant to satisfy the authorities in the manner prescribed, on the genuineness of her

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application. In any case, the Division Bench was unjustified in holding that mandating the physical presence of the husband is arbitrary. In the absence of any challenge to the provisions of the *Citizenship Act 1955*, the Visa Manual, administrative instructions, or the checklist, such observations of the High Court were unmerited. In this regard, the prayer in the writ petition may be noted as under:

“a. issue, a Writ of Mandamus or any other appropriate Writ directing the Respondent not to insist for the presence of husband of the Petitioner, for granting Overseas Citizen of India and/or

b. Issue a Writ of Mandamus or any other appropriate Writ directing the Respondent to issue the Overseas Citizenship’ of India card to the Petitioner: and/or

Any other relief that the Hon’ble Court may deem fit in the facts and circumstances of the instant case.”

17. Having considered the process for verifying the genuineness, we are of the view that the direction issued in the impugned judgment to dispense with the presence of the applicant’s spouse, has no legal basis. Moreover, apart from the physical/virtual presence of the spouse other conditions are also to be satisfied by an applicant as is provided under the *Citizenship Act 1955*, the checklist and the Visa Manual for which even a declaration by the husband may be necessary.
18. In consequence of our above discussion, the impugned judgments dated 22.07.2021 and 25.03.2022 of the learned Single Judge and the learned Division Bench of the High Court dispensing with the physical presence of the respondent’s spouse during the process of interview for consideration of her application for OCI Card are found to be unsustainable and are set aside.
19. The Counsel for the Respondent attempted to make the submission that this is a peculiar case where the marriage is subsisting and the wife has been abandoned. In a case of estrangement, the applicant would fall under the category of a ‘special circumstance’ as the rules are silent for such a category. In this regard, *Section 7A(3)* of the *Citizenship Act, 1955* was brought to our notice:

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“(3) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an Overseas Citizen of India Cardholder.”

20. Noticing this special provision, we may observe that the present order will not come in the way of the Central Government to consider if any special circumstances exists for consideration of the respondent's application and it will then be open for the respondent to make good her case. However, such discretion is entirely left to the Central Government and we are not expressing any opinion on whether the respondent deserves such consideration or not.
21. With the above, the appeals are allowed by interfering with the impugned judgments. Pending application(s), if any, stand closed.

Result of the case: Appeals allowed.

†Headnotes prepared by: Nidhi Jain