

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS.359 & 361 OF 2024

WRIT PETITION NO.359 OF 2024

Baylon Tome Remedious Gomes,
Aged 54 years, son of Shri Bento
Nazario Celsio Gomes,
Portuguese National, resident of
House No.85/A, Falvaddo,
Arossim, Cansaulim,
South Goa, 403712.

... Petitioner

Versus

1. The Union of India
Through the Ministry of External
Affairs, Secretariat Building,
South Block, New Delhi, 110001.

2. Ministry of External Affairs,
Through its Secretary,
Government of India,
Secretariat Building, South Block,
New Delhi, 110001.

3. Foreigners Regional Registration
Office (FRRO),
OCI Cell, DCP SB-II CID & FRRO
Office, Annex Building, IIIrd Floor,
Badruddin Tayabji Marg,
Behind St. Xavier's College,
Chhatrapati Shivaji Terminus Area,
Mumbai, Maharashtra 400001.

4. Regional Passport Office,

Through the Passport Officer,
Having its office at Passport Seva
Kendra, Passport Bhavan, EDC
Complex, Patto, Panaji, Goa –
403001. ... Respondents

Mr Zeller De Souza, Advocate for the Petitioner.
Mr Pravin Faldessai, Deputy Solicitor General of India with Mr
Raviraj Chodankar, Central Government Standing Counsel for
the Respondents.

AND
WRIT PETITION NO.361 OF 2024

Mr Ivan Savio Rock Fernandes
Son of Diogo Fernandes, aged 41 years,
Portuguese National, resident of
House No.496, Penha de Franca,
Bardez, Goa. Petitioner

Versus

1. Union of India
Through the Ministry of External Affairs,
Secretariat Building, South Delhi,
New Delhi, Delhi.

2. Ministry of External Affairs,
Through its Secretary,
Government of India,
Secretariat Building, South Delhi,
New Delhi, Delhi.

3. Foreigners Regional Registration Office (OCI),
Mumbai, Maharashtra.

Mr Shane Gomes Pereira, Advocate for the Petitioner.
Mr Pravin Faldessai, Deputy Solicitor General of India with Mr

Raviraj Chodankar, Central Government Standing Counsel for the Respondents.

**CORAM: M. S. SONAK &
VALMIKI MENEZES, JJ.**

DATE: 6th MAY 2024

ORAL JUDGMENT: (*Per M.S. Sonak, J.*)

- 1.** Heard Mr Zeller De Souza for the petitioner in Writ Petition No.359/2024 and Mr Shane Gomes Pereira for the petitioner in Writ Petition No.361/2024. Mr Pravin Faldessai, learned Deputy Solicitor General of India appears for the respondents in both these petitions.
- 2.** Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
- 3.** The petitioners challenge communications dated 17.11.2023 and 11.05.2023, which are almost identical, by which the FRRO, Mumbai, has informed the petitioners that they are not eligible to apply for Overseas Citizenship of India (OCI) registrations as the previous Indian Passports of the petitioners had been revoked by the concerned issuing Indian Authority. These impugned communications are at Exhibit P (page 63) in Writ Petition No.359/2024 and Annexure D (page 25) in Writ Petition No.361/2024.
- 4.** The learned Counsel for the petitioners had contended before us that the revocation of their Indian Passports was irrelevant when deciding their applications for OCI registrations.

5. Mr Faldessai has placed before us an Office Memorandum (OM) dated 04.04.2024 issued by the Ministry of External Affairs (PSP Division) on the subject of Mandatory Issuance of Revocation Order wherein the Passport Issuing Authorities (PIAs) decided to revoke the Passport by invoking Section 10(3) of the Passports Act, 1967, as the Indian Passport was obtained after acquisition of Portuguese nationality/citizenship. He submits that this OM dated 04.04.2024 now clarifies that an order revoking the Indian Passport would be considered a Surrender Certificate, a mandatory document for obtaining OCI cards. He submitted that in view of this OM dated 04.04.2024 if both the petitioners reapply for OCI card/registration, their applications would be considered in accordance with the law in the light of OM dated 04.04.2024.

6. The learned Counsel for the petitioners have clarified that in these petitions, they have not challenged and are not pursuing any challenge to the orders by which their Indian Passports came to be revoked. However, Mr Shane Gomes Pereira submitted that one of the petitioners' contentions was that the Authorities should not even insist upon any Surrender Certificate as a precondition for the OCI card/registration issue. However, he accepted that the petitioner would apply, without prejudice to this contention, to the Authorities for OCI Card/registration and that such application should be considered *inter alia* in the light of OM dated 04.04.2024.

7. Considering the above submissions and the OM dated 04.04.2024, it is evident that the impugned communications declaring that petitioners were not eligible to apply for OCI registration because the concerned Indian Passport Authority has revoked their previous Indian Passports can no longer be sustained.

8. Mr Faldessai's submission based on the OM dated 04.04.2024 was quite clear since hereafter, an order of revocation of petitioners' Indian Passports would itself be considered as a Surrender Certificate, and based thereon, petitioners' application for OCI card/registration would be processed and considered in accordance with law. With this development, there would remain no difference between a passport revocation order and a passport surrender certificate to process OCI cards/registration.

9. The OM dated 04.04.2024 is transcribed below for the convenience of reference:

“No. VI/125/1/10/2023(PT)
Ministry of External Affairs
(PSP Division)

*Patiala House Annexe, Tilak Marg
New Delhi, 04th April 2024*

Office Memorandum

***Subject: Mandatory issuance of Revocation Order
wherein PIAs decide to revoke the passport by
invoking Section 10(3) of the Passports Act, 1967, as***

Indian passport was obtained after acquisition of Portuguese nationality/citizenship.

To regulate the surrender cases of Indian passport by an erstwhile Indian citizen on account of acquisition of foreign nationality, instructions were issued vide OM No.VI/405/04/03/2021 dated 30th November 2022 (copy enclosed). Wherein it is stipulated that upon receipt of an application for issuing a Surrender Certificate in lieu of an Indian Passport, PIAs may also revoke such passport by invoking Section 10(3) of the Passports Act, 1967 if the passport/travel document was obtained by suppression of material information about holder's having obtained foreign nationality.

2. Consequently, PIAs have revoked passport (instead of issuing surrender certificate) of many Indian national hailing from erstwhile Portuguese territories in India (Goa, Daman & Diu), if the passport in question, was obtained after acquisition of Portuguese nationality/citizenship. Since "Surrender Certificate" is one of the mandatory documents for obtaining OCI Card, revocation of passport has rendered them ineligible for obtaining OCI Card.

3. However, MHA has now decided to accept "Revocation Certificate" as an alternative documents in lieu of Surrender Certificate in case of Indian nationals hailing from erstwhile Portuguese territories in India (Goa, Daman & Diu), who have acquired Portuguese nationality as per Portuguese Nationality Law, and who have been issued "Revocation Order" by the RPOs instead of Surrender Certificate.

4. In view of the above, all PIAs are hereby advised to mandatorily issue Revocation order, in all such cases wherein instead of issuing Surrender Certificate, PIAs

decide to revoke the passport by invoking Section 10(3) of the Passports Act, 1967.

[DR. K.J. SRINIVASA]
Joint Secretary (CPV)

To: All Passport Issuing Authorities in India and abroad."

10. The above OM, in our opinion, governs the case of the petitioners who were held as ineligible to even apply for OCI card/registration on the ground that their Indian Passports had been revoked and that they had not surrendered such passports and produced Surrender Certificate. Now that there is no difference between the surrendering of an Indian Passport and the revocation of an Indian Passport, the very order by which the petitioners' passports came to be revoked would have to be considered as a Surrender Certificate for purposes of OCI card/registration.

11. Mr Faldessai very fairly pointed out that the orders by which the petitioners' passports were revoked would itself be considered Revocation Certificates or Surrender Certificates for obtaining the OCI card/registration. Thus, the production of the Revocation Order would suffice for consideration of an application for an OCI card/registration.

12. With the above position being clarified by Mr Faldessai and also the OM dated 04.04.2024, we set aside the impugned communications issued by the FRRO, Mumbai, holding that the petitioners were ineligible to apply for OCI card/registration as the Indian Authorities have revoked their previous Indian Passports.

13. The learned Counsel for the petitioners stated that the Petitioners would now reapply for OCI card/registration within four weeks from today to the appropriate Authority. If such applications are made, they should be disposed of in accordance with the law, including, in particular, the statements made before this Court and the OM dated 04.04.2024.

14. The rule is made absolute in the above terms without any cost order. All concerned to act on an authenticated copy of this order.

VALMIKI MENEZES, J.

M. S. SONAK, J.