

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 9457 of 2025**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK Sd/-

Approved for Reporting	Yes	No
		No

DOLLY KHILANKUMAR VADALIA NEE DOLLY KETAN BARAI W/O
KHILANKUMAR ASHOKBHAI VADALIA
Versus
UNION OF INDIA & ORS.

Appearance:

MR SP MAJMUDAR(3456) for the Petitioner(s) No. 1
MS KRISHNA S SHAH(13157) for the Petitioner(s) No. 1
MR ADITYA DAVDA AGP for the Respondent(s) No. 4,5
MR PRADIP D BHATE(1523) for the Respondent(s) No. 1,2,3

CORAM:HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Date : 30/04/2026

JUDGMENT

1. **Rule** returnable forthwith. Mr. Bhate, learned Standing Counsel waives service of rule for and on behalf of respondent Nos. 1 to 3 and Mr. Aditya Davda, learned AGP waives service of rule for and on behalf of respondent Nos. 4 and 5.

2. With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

3. Present petition is filed by the petitioner under Articles

14, 21 and 226 of the Constitution of India r/w the provisions of the Citizenship Act, 1955; and Citizenship Rules, 2009 seeking below mentioned relief/s:-

“30(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside communication dated 09.05.2025 issued by Respondent No. 3 at Annexure-O;

(B) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent authorities to process petitioner's passport application bearing application number AH4060851007025 at Annexure-M expeditiously and directing the respondent authorities to issue an Indian passport to the petitioner without insisting on producing a copy of the certificate of registration of citizenship or a certificate of naturalization of Indian citizenship in light of the facts of the case;

(C) In the alternative to Para 29 (A) and (B), YOUR LORDSHIPS may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside communication dated 13.05.2025 issued by Respondent No. 5 at Annexure R requiring the petitioner to submit a foreign passport for issuance of certificate of registration of Indian citizenship or a certificate of naturalization of Indian citizenship and directing the respondent authorities to issue certificate of registration of Indian citizenship or a certificate of naturalization of Indian citizenship without requiring the petitioner to submit a foreign passport and consequently, directing the respondent authorities to issue an Indian passport to the petitioner in light of the facts of the case;

(D) During the pendency and final disposal of the present petition, YOUR LORDSHIPS may be pleased to issue an Indian passport to the petitioner expeditiously

without requiring the petitioner to submit a certificate of registration of Indian citizenship or certificate of naturalization of India citizenship; and

(E) Pass any such other and/or further orders that may be thought just and proper, in the facts circumstances and of the present case."

4. The facts giving rise to present petition are that the petitioner was born on 18.02.2000 in Xai-Xai, Mozambique to Indian citizen parents, namely Ketan Hasmukhrai Barai and Arti Ketanbhai Barai, both of whom hold valid Indian passports and other identity documents issued by the Government of India. The petitioner's birth was duly registered with the competent authorities in Mozambique and a birth certificate was issued in her name. Immediately thereafter, Mozambique was struck by a severe flood emergency, owing to which the petitioner, who was only about 18-25 days old, along with her parents, was compelled to return to India on 14.03.2000. An emergency certificate was issued solely to facilitate her return to India. The petitioner has never acquired Mozambican citizenship nor has she ever held any foreign passport. Due to the said emergency situation, the petitioner's birth could not be registered with the Indian Consulate in Mozambique within the prescribed period.

4.1 Since 14.03.2000, the petitioner has been continuously residing in Rajkot, Gujarat and has

completed her entire schooling and higher education in India, including obtaining a Master's degree from Saurashtra University. The petitioner married an Indian citizen, Khilankumar Ashokbhai Vadalia, on 30.07.2023 in Rajkot, and the said marriage is duly registered. Her husband is an Indian citizen holding a valid Indian passport and is presently working in Canada on the basis of a valid work permit.

4.2 Thereafter, the petitioner applied for issuance of an Indian passport however, the respondent authorities raised objections on the ground that the petitioner was born in Mozambique and required her to furnish documents such as cancellation of the emergency certificate, consular registration of birth, or proof of Indian citizenship. The petitioner approached the High Commission of Mozambique and was informed that there is no procedure for cancellation of the emergency certificate and that she is not a citizen of Mozambique. The petitioner thereafter obtained an attested copy of her birth certificate from the High Commission of India in Maputo, Mozambique, which further clarified that registration of birth could not be carried out at this stage as the same was required to be done within one year of birth.

4.3 Petitioner's passport application was closed and she was directed to produce a certificate of registration or

naturalization of Indian citizenship. The petitioner approached the concerned authorities for issuance of such certificate; however, she was informed that she would be required to produce a valid foreign passport. The petitioner does not possess any foreign passport, as she has never acquired citizenship of any foreign country. The petitioner has been residing in India since infancy, has been educated in India, is married to an Indian citizen, and holds multiple identity documents issued by Indian authorities. Despite these facts, the respondent authorities have failed to process and grant the petitioner an Indian passport.

4.4 In view of the above facts, the petitioner has preferred present petition with aforementioned relief/s.

5. Heard Mr. Krishna Shah, learned counsel for the petitioner, Mr. Pradip D. Bhate, learned Standing Counsel for the respondent Nos.1 to 3 and Mr. Aditya Davda, learned AGP for respondent Nos. 4 and 5.

6. Learned counsel for the petitioner submits that the impugned actions of the respondent authority are contrary to law. It is submitted that the petitioner has married an Indian citizen holding an Indian passport and other valid Indian documents. It is also submitted that the petitioner herself holds several official Indian documents like an Aadhar card, PAN card, license, Voter ID and

driving license.

6.1 Learned counsel for the petitioner submits that the respondent authorities refused to process the petitioner's passport application despite the petitioner having submitted all the necessary documents. It is submitted that the petitioner was never a citizen of Mozambique and has never held Mozambican citizenship. It is submitted that the petitioner was informed by the Ld. Additional Chitnish to the Collector, Rajkot that in order to apply for Indian citizenship, the petitioner would need to submit a valid foreign passport. It is submitted that the petitioner informed the respondent authorities that the petitioner does not have a foreign passport as she was never a citizen of Mozambique and as she has lived in India since she was a child. It is submitted that the respondent authorities' refusal to grant the petitioner an India passport is in violation of the petitioner's fundamental right to hold a valid India passport which is envisaged under the fundamental right to life under Article 21 of the Constitution of India. It is submitted that the refusal to issue a passport is contrary to the provisions of the Citizenship Act, 1955. It is submitted that petitioner's birth has been validly registered under the Registration of Births and Deaths Act, 1969 pursuant to a court order, and registration at an Indian Consulate is not mandatory in petitioner's case.

6.2 Over and above, the ground mentioned in the memo of the petition, learned counsel for the petitioner urges before the Court to allow the petition and quash the communication dated 9.5.2025 issued by respondent No.3.

7. On the other hand learned Standing Counsel / AGP for the respondent authorities have opposed the petition and submits that the impugned communication is in consonance with the settled principle of law and therefore, the same may not be quashed.

7.1 It is submitted that the petitioner entered India on an Emergency Certificate issued by the Government of Mozambique dated 12.03.2000, along with an Indian visa dated 10.03.2000 valid up to 09.09.2000, which indicates that her parents did not follow the prescribed procedure for acquiring Indian citizenship by descent at the time of petitioner's birth in Mozambique and that she appears to have held Mozambican citizenship. It is submitted that upon examination of petitioner's application, it was found that the petitioner does not qualify as an Indian citizen under the proviso to Section 4(1)(b) of the Citizenship Act, 1955, as petitioner failed to provide proof of registration of her birth at an Indian Consulate within one year of birth or thereafter with the approval of the Central Government.

7.2 It is submitted that an objection letter dated 09.05.2025 was issued calling upon petitioner to submit documentary proof of Indian citizenship, such as a certificate of registration or naturalization, since issuance of a passport is restricted to Indian citizens. It is submitted that petitioner's earlier passport applications dated 29.09.2023 and 24.03.2025 were also closed for the same reason, i.e., failure to establish Indian citizenship. It is submitted that the allegation that the actions of the passport authority are contrary to the Passport Act, 1967 and Passport Rules, 1980 is not correct, as no provisions have been violated in view of petitioner's failure to establish citizenship under Sections 3 or 4 of the Citizenship Act, 1955. It is submitted that the matter was referred to the Ministry of External Affairs, which sought input from the Ministry of Home Affairs, and MHA vide communication dated 15.10.2025 reiterated that under Section 4 of the Citizenship Act, 1955 read with Rule 3 of the Citizenship Rules, 2009, birth must be registered at an Indian Consulate to claim citizenship by descent, and also outlined the procedure for applying under Sections 5 or 6 of the Act.

7.3 It is submitted that the petitioner has submitted a birth certificate issued by Rajkot Municipal Corporation dated 18.10.2025 showing Rajkot as her place of birth

based on a Magistrate's order; however, the same is not valid for citizenship purposes as prior approval of the Central Government, as required under Section 4, does not appear to have been obtained and the certificate records an incorrect place of birth. It is submitted that for citizenship by descent, birth must be registered at an Indian Consulate, and the power to allow delayed registration beyond one year is vested in the Heads of Indian Missions as delegated by the Ministry of Home Affairs.

7.4 In view of the above submissions, it is submitted that present petition may not be entertained and the same may be dismissed.

8. I have perused relevant material and documents placed on record. I have also gone through the record of the petition.

9. It is an admitted fact that the petitioner was born on 18.02.2000 in Xai-Xai, Mozambique to Indian citizen parents. Immediately thereafter, Mozambique was struck by a severe flood emergency, owing to which the petitioner, who was only about 18-25 days old, along with her parents, was compelled to return to India on 14.03.2000. The petitioner married an Indian citizen, Khilankumar Ashokbhai Vadalia, on 30.07.2023 in Rajkot,

her husband is an Indian citizen holding a valid Indian passport and is presently working in Canada on the basis of a valid work permit.

10. The petitioner applied for the passport before the respondent authority. However, the respondent authority raised objections on the ground that the petitioner was born in Mozambique and required her to furnish documents such as cancellation of the emergency certificate, consular registration of birth, or proof of Indian citizenship. Thereafter, the petitioner approached the High Commission of Mozambique and was informed that there is no procedure for cancellation of the emergency certificate and that she is not a citizen of Mozambique.

11. Upon examination of petitioner's application, the authority found that petitioner does not qualify as an Indian citizen under the proviso to Section 4(1)(b) of the Citizenship Act, 1955, as petitioner failed to provide proof of registration of her birth at an Indian Consulate within one year of birth or thereafter with the approval of the Central Government. The petitioner's passport application was closed and she was directed to produce a certificate of registration or naturalization of Indian citizenship. It also appears from the record that the parents of the petitioner had not followed the procedure

to acquire Indian citizenship by descent for the petitioner when the petitioner was born. It also appears from the record that previously two passport applications vide number AH1068614056223 dated 29.09.2023 and AH4060851007025 dated 24.03.2025 were closed to same reasons as petitioner was not able to submit documentary proof of being an Indian Citizen. Further, the petitioner has failed to prove Indian citizenship as she is not an Indian citizen by birth or by descent as per provision of Section 3 and 4 of the Citizenship Act, 1955.

12. For the foregoing reasons and after hearing learned counsel appearing for both the sides, I am of the opinion that present petition does not deserve to be entertained and the same deserves to be dismissed and the same is hereby dismissed.

14. It is open for the petitioner to make online application/off line application for citizenship before the concerned authority. The concerned authority shall decide the same in accordance with law.

SURESH SOLANKI

Sd/-
(HEMANT M. PRACHCHAK,J)