

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY ,THE 04TH DAY OF JANUARY 2019 / 14TH Pousha, 1940

WP(C).No. 249 of 2019

PETITIONER/S:

SARANYA R.A.,
AGED 27 YEARS
D/O RAJENDRAN NAIR, 56/NANDANAM THETTIMUTTOM LINE,
MELAMKODE NEMOM THIRUVANANDAPURAM-695020.

BY ADV. SMT.V.GEETHA POTTI

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF
REGISTRATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 THE INSPECTOR GENERAL OF REGISTRATION,
VANCHIYOOR, THIRUVANANTHAPURAM-695035.
- 3 THE SUB REGISTRAR (MARRIAGE OFFICER),
SUB REGISTRAR OFFICE,NEMOM, NEMOM P.O.,
THIRUVANANTHAPURAM.
695 001

OTHER PRESENT:

SRI.JESTIN MATHEW, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04.01.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P.(C)No.249 OF 2019

Dated this the 4th day of January, 2019

JUDGMENT

The petitioner who is a citizen of India is aggrieved by the refusal on the part of the 3rd respondent notified marriage officer to solemnize her marriage with one Deepu Prasanna Rajan who though a person of Indian origin is now a citizen of United States of America on the ground that marriage between a citizen of India and a foreign citizen cannot be solemnized in terms of the provisions contained in the Special Marriage Act, 1954.

2. The prayers in the above Writ Petition (Civil) are as follows :

“i) Issue a writ of mandamus or such other writ, or directions or orders directing the 3rd respondent to accept Exhibit P3 application and notice of intended marriage submitted by petitioner and her bride groom Deepu Prasanna Rajan.

ii) Issue a writ of mandamus or such other writ, or directions or orders directing the 3rd respondent to waive the 30 days notice period and solemnizing the marriage of

the petitioner with the foreigner on 11.01.2019.

iii) Grant such other writs or directions which this Hon'ble Court may deem fit and proper in the circumstances of the case.”

3. Heard Sri.V.N.Subash, the learned counsel for the petitioner and Sri.Jestin Mathew, the learned Government Pleader appearing for the respondents.

4. The petitioner is a citizen of India and she has submitted Ext.P3 notice of intended marriage under Section 5 of the Special Marriage Act, 1954 for getting solemnized her marriage with one Deepu Prasanna Rajan who though a person of Indian origin is now a citizen of United States of America and who is settled there. The petitioner and the said Deepu Prasanna Rajan have submitted Ext.P3 notice of intended marriage under Section 5 of the Special Marriage Act, 1954 on 30.12.2018 and it is stated that 30 days' time limit from the submission of Ext.P3 notice of intended marriage is to fall on 29/01/2018 . In the meanwhile the petitioner had made enquires with the 3rd respondent Sub Registrar who is the notified registrar under the provisions of the Special Marriage Act, 1954 and he has informed that he is not in a position to solemnize the marriage of the petitioner with the said Deepu Prasanna Rajan who is a citizen of United States of America on the ground that marriage between a citizen of India and a foreign citizen cannot be solemnized under the provisions of the Special Marriage Act,

1954. According to the petitioner, the said stand of the 3rd respondent notified marriage officer is illegal and ultra vires and is against a catena of rulings of this court on the subject as in **Vivian Varghese v. State of Kerala (2015 (3) KLT 21)** and **Prasyanth Sreenivasan v. Sub Registrar, Alappuzha (2018 (3) KLT 545)** wherein this court has held in no uncertain terms that there is no restriction in the Special Marriage Act which prohibits marriage between an Indian citizen and a foreign citizen in terms of the provisions contained in the Special Marriage Act and that the circulars in that regard issued by the department concerned not to solemnize the said marriage between an Indian citizen and a foreign citizen has already been quashed by this court etc. The petitioner would however assert that both she and the proposed bride groom has fulfilled all the eligibility conditions as laid down in the Special Marriage Act,1954 and has not incurred any of the disqualifications as prescribed in the Special Marriage Act and that direction may be given to the 3rd respondent Sub Registrar to solemnize the marriage of the petitioner with Deepu Prasanna Rajan immediately after the expiry of the 30 days' time limit as envisaged in Section 5 of the Special Marriage Act, 1954.

The matter in issue is no longer res integra and is fully covered in favour of the petitioner and against the respondents as per the dictum laid

down by this court in a catena of rulings as in **Rajeev v. State of Kerala (2001 (1) KLT 578)**, **Vivian Varghese v. State of Kerala (2015 (3) KLT 21)** and **Prasyanth Sreenivasan v. Sub Registrar, Alappuzha (2018 (3) KLT 545)**. In **Rajeev v. State of Kerala (2001 (1) KLT 578)**, this Court has categorically held that the Special Marriage Act does not contain any prohibition for solemnization of the marriage, if one of the parties is a foreigner. In **Prasyanth Sreenivasan v. Sub Registrar, Alappuzha (2018 (3) KLT 545)**, this Court has held that no prescription has been made in any of the provisions of the Special Marriage Act, 1954 that the marriage between an Indian national and a foreign national is in any manner prohibited or restricted by that Act and that the circular dated 8.8.2014 issued by the Inspector General of Registration prohibiting such marriage between an Indian national and a foreign national is ultra vires and unenforceable. This court held in paragraph 6 of the above said judgment in **Prasyanth Sreenivasan's** case (supra) that Section 4 is the basic provision in Special Marriage Act, 1954 which deals with eligibility conditions relating to solemnization of marriage and no prescription has been made in Section 4 or in any other provisions of the Special Marriage Act, 1954 that the marriage between an Indian national and a foreign national is in any manner prohibited or restricted by that Act. Hence it was held by this Court that the impugned

circular dated 8.8.2014 issued by the Inspector General of Registration and other circulars in the State Government referred to therein have been issued by the respondent authorities without comprehending the correct legal position in that regard. It was held that the prohibition in such departmental circulars to the extent it prohibits solemnization and registration of the marriage between an Indian citizen and a foreign national in terms of the provisions contained in the Special Marriage Act, 1954 is ultra vires and unenforceable. It is stated that the parties have already made available single status certificate of the bride groom as per Ext.P5 etc.

Accordingly, it is ordered and declared that the stand of the 3rd respondent notified marriage officer that he is not in a position to solemnize the marriage of the petitioner with the said Deepu Prasanna Rajan who is a citizen of United States of America on the ground that marriage between a citizen of India and a foreign citizen cannot be solemnized under the provisions of the Special Marriage Act, 1954 is illegal, ultra vires and unenforceable. It is ordered that Ext.P3 notice of intended marriage given by the petitioner shall be accepted by the 3rd respondent, if it is otherwise in order and the petitioner shall be permitted to contract the marriage intended by her with Deepu Prasanna Rajan which shall be solemnized by the 3rd respondent as per the provisions in the Special Marriage Act, 1954

immediately after completion of the 30 days' time limit after submission of Section 5 notice of intended marriage. It is ordered that the petitioner and the proposed bride groom may submit separate sworn affidavits attested before a notary public stating their single status and also stating that they have fulfilled all the eligibility conditions prescribed under the Special Marriage Act and that they have not incurred any of the disqualifications prescribed under the Special Marriage Act and that both of them are single etc. as averred in the petition etc.

With these observations and directions, the above Writ Petition (Civil) will stand finally disposed of.

Sd/-

**ALEXANDER THOMAS
JUDGE**

SV.

APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | TRUE COPY OF THE ADDHAR CARD OF PETITIONER |
| EXHIBIT P2 | TRUE COPY OF THE PASSPORT DETAILS OF THE DEEPU PRASANNA RAJAN |
| EXHIBIT P3 | TRUE COPY OF THE APPLICATION SUBMITTED UNDER SECTION 5 OF THE SPECIAL MARRIAGE ACT DATED 30.12.2018 DOWNLOADED FROM THE WEBSITE |
| EXHIBIT P4 | TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 26.4.2016 IN WPC,15858/2016 |
| EXHIBIT P5 | TRUE COPY OF THE SINGLE STATUS CERTIFICATE ISSUED BY USA STATE OF NEW JERSEY DATED 30.11.2018 |
| EXHIBIT P6 | TRUE COPY OF THE RETURN TICKET OF DEEPU PRASANNA RAJAN |