

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 10TH DAY OF JULY 2018 / 19TH ASHADHA, 1940

WP(C).No. 22941 of 2018

PETITIONER

PRASYANTH SREENIVASAN,  
AGED 37 YEARS, VAZHATHARA HOUSE, PALACE WARD,  
IRON BRIDGE P.O., ALAPPUZHA DISTRICT.

BY ADVS.SRI.S.SANAL KUMAR  
SMT.BHAVANA VELAYUDHAN  
SMT.T.J.SEEMA

RESPONDENTS:

1. THE SUB REGISTRAR,  
OFFICE OF THE SUB REGISTRAR,  
ALAPPUZHA- 688 011.
2. THE DISTRICT REGISTRAR,  
ALAPPUZHA- 688 011
3. THE INSPECTOR GENERAL OF REGISTRATION,  
THIRUVANANTHAPURAM- 695 001.
4. STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO REGISTRATION  
DEPARTMENT, THIRUVANANTHAPURAM- 695 001.

BY SR GOVERNMENT PLEADER SRI. SAIGI JACOB PALATY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 10-07-2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE RELEVANT PAGES OF THE  
PASSPORT NO.Z3079541 OF THE PETITIONER.
- EXHIBITP2 TRUE COPY OF THE RELEVANT PAGES OF THE  
PASSPORT NO.C2414HJ6T OF LUISA LASKOWSKI.
- EXHIBIT P3 TRUE COPY OF THE CERTIFICATE OF MARRIAGE ISSUED  
BY THE THIRUVANANTHAPURAM CORPORATION  
DATED 07-02-2018.
- EXHIBITP4 TRUE COPY OF THE JUDGMENT IN OP (HMA)  
NO.1676/2014 OF THE FAMILY COURT,  
THIRUVANANTHAPURAM DATED 11-05-2015.
- EXHIBITP5 TRUE COPY OF THE CERTIFICATE ISSUED BY THE CIVIL  
REGISTRY OFFICE OF THE GERMAN AUTHORITY DATED  
04-05-2018
- EXHIBITP6 TRUE COPY OF THE CIRCULAR NO.R.R. 3-25537/2000  
ISSUED BY THE INSPECTOR GENERAL OF  
REGISTRATION, DATED 08-08-2014.
- EXHIBITP7 TRUE COPY OF THE JUDGMENT IN WP(C) NO.28599/2014  
OF THIS HON'BLE COURT DATED 11-12-2014.

RESPONDENTS EXHIBITS NIL

/TRUE COPY/

PA TO JUDGE

sdr/-  
17.7.18

“C.R”

ALEXANDER THOMAS, J.

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W.P(C).No.22941 Of 2018  
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Dated this the 10<sup>th</sup> day of July, 2018.

J U D G M E N T

It is averred that the petitioner is an Indian citizen, who has attained the age of majority. Earlier he had married an Indian citizen, viz., Teena Saji, D/o.Saji, residing at TC 28/530, Chrystal House, Kaithamukku, Petta P.O., Thiruvananthapuram, on 7.7.2011 in terms of the provisions contained in the Hindu Marriage Act and Ext.P-3 is the certificate of marriage issued by the competent authority in respect of the earlier marriage of the petitioner. It is further stated that later the marriage between the petitioner and the said Teena Saji was dissolved as per Ext.P-4 judgment and decree dated 11.5.2015 of the Family Court, Thiruvananthapuram, in O.P(HMA).No.1676/2014 on the basis of mutual consent between the parties.

2. It is the further case of the petitioner that while working in Dubai, he got acquainted with a lady of German national namely, Luisa Laskowski, and that pursuant to the proposal for marriage that was mooted by the families of both sides, the petitioner and the said German lady have decided to solemnize their marriage under the provisions of the Special Marriage Act, 1954. That the petitioner had approached the

1<sup>st</sup> respondent-Sub Registrar, Alappuzha, who is stated to be the notified Registrar for solemnization of marriage under the Special Marriage Act, 1954, for taking further steps for solemnization and registering the marriage of the petitioner with the said lady. It is further stated that Ext.P-5 is the requisite certificate issued by the Civil Registry Office of the German authorities concerned, wherein it has been inter alia stated that the petitioner's fiancée, Luisa Laskowski, has no impediment to marry abroad. That when the petitioner had approached the 1<sup>st</sup> respondent-Sub Registrar for ensuring issuance of requisite notice of the intended marriage in terms of the provisions of the Special Marriage Act, 1954, the officials concerned in the office had earlier informed the petitioner that in view of the provisions contained in Ext.P-6 circular No.R.R.3-25537/00 dated 8.8.2014 issued by the 3<sup>rd</sup> respondent-Inspector General of Registration, the marriage between an Indian citizen and a foreign national cannot be solemnized and registered in terms of the provisions of the Special Marriage Act, 1954. The petitioner would contend that Ext.P-6 circular cannot stand in the way of solemnization of the intended marriage of the petitioner with the German national if they otherwise satisfy all the other requirements of the Act. That the eligibility conditions for solemnization of the marriage

are enumerated in the provisions of the Special Marriage Act and said provision or any other provisions do not in any manner prohibit the marriage between an Indian national and a foreign national. It is in the light of these aspects, that the instant Writ Petition has been filed seeking the following prayers:

- i. Issue a writ of certiorari or any other appropriate writ, order or direction calling for records relating to Exhibit P6 and quash the same;*
- ii. Issue a writ of mandamus or any other appropriate writ, order or direction directing the 1<sup>st</sup> respondent to accept the application of the petitioner and his intended spouse in the Form prescribed under Special Marriage Act, 1954, process the same and solemnize the marriage between the petitioner and the intended spouse Luisa Laskowski in accordance with the provisions contained in the Special Marriage Act, 1954.*
- iii. Issue such other writ, order or direction which this Honourable Court deems fit in the nature and circumstances of the case."*

3. Heard Smt.V.Bhavana, learned counsel for the petitioner and Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondents.

4. This Court in the judgment in ***Rajeev v. State of Kerala***, reported in 2001 (1) KLT 578, has held that even if one of the parties is not an Indian Citizen, the marriage can be solemnized under the Special Marriage Act and the Act also does not contain any prohibition for solemnization of the marriage, if one of the parties is a foreigner. The said judgment of this Court in ***Rajeev v. State of Kerala***, in 2001 (1) KLT 578, reads as follows:

*“This Original Petition is filed for a direction to the second respondent to accept the original of Ext. P1 and take necessary action on it. Ext. P1 is an application for registering the marriage under the Special Marriage Act. The submission of the learned counsel for petitioner is that the Registrar of Marriages has informed the petitioner that since one of the parties to the marriage is not an Indian citizen, the marriage cannot be registered. When this Original Petition came up for hearing, the learned Government Pleader submitted that the marriage is not registered because Ext. P1 application is not properly filled up and if proper corrections are made in the application form, the marriage will be solemnised. Learned counsel for petitioner pointed out the decision reported in Marian Eva v. State of Himachal Pradesh (AIR 1993 Himachal Pradesh 7) which shows that even if one of the parties is not an Indian citizen, the marriage can be solemnized under the Special Marriage Act. The Act also does not contain any prohibition for solemnisation of the marriage, if one of the parties is a foreigner. Therefore, this Original Petition is allowed and the second respondent is directed to solemnise the marriage under the Special Marriage Act provided the petitioner makes necessary corrections in the original of Ext. P1 and after the scrutiny of the same by the second respondent according to the Rules.”*

5. Further this Court has held in the case in ***Vivian Varghese v. State of Kerala***, reported in 2015 (3) KLT 21, para 6 thereof, that while construing the provisions under the Special Marriage Act, the requirement to inform the Marriage Officer of the district in which the other party to the marriage has residence, would operate only within the territories of India as per the existing law contained in the Special Marriage Act and Sec.6 thereof requires that when either parties to an intended marriage is not permanently residing within the local limits of the marriage officer, then the marriage officer of the district in which the other party has the residence should be informed of the marriage

and this would operate only within the territories of India and not if foreign citizen is residing outside India. In that case the respondent State authority had placed reliance on a public notice bearing No.R.R.6/23638/2014 dated 21.10.2014 to support the rejection of the proposed marriage by the respondent-Registrar therein and it was contended that there is no marriage officer appointed by the Government of India in the Embassy of India at the foreign country concerned and there is no provision for sending a communication as required under sub-sec.(3) of Sec.6 of the Special Marriage Act. This Court has held in para 5 of the judgment in *Vivian Varghese's* case (supra) that a reading of the said notice dated 21.10.2014 would indicate that as per the Special Marriage Act, 1954, diplomatic and consular officers of the Embassies of India, abroad were appointed as marriage Officers under the Special Marriage Act. The contention of the Government expressed in that public notice dated 21.10.2014 was that a foreign citizen seeking registration of marriage with an Indian citizen, within the territories of India, the Government could get confirmation on the status of such foreign citizens from such Marriage Officers appointed in the Embassy. On this aspect of the matter, this Court held in para 5 thereof that by introduction of Foreign Marriage

Act, 1969, the provisions for making Rules with respect to the diplomatic and consular officers and others as provided in Sec.50 of the Act of 1954 were taken away and in such circumstances, there are no marriage officers as of now appointed by the Government of India, abroad, and in such circumstances public notice dated 21.10.2014 was issued, by which it is indicated that the Government is endeavouring to make suitable amendments, to facilitate the marriage of Indian citizens with foreign citizens within the territories of India. This Court has categorically held in para 6 of the said judgment that essentially a marriage cannot be kept in abeyance only by reason of such law having not been introduced, etc., and after placing reliance on the judgment of this Court in *Rajeev v. State of Kerala*, reported in 2001 (1) KLT 578, it was held that the requirement in Sec.6 of the Special Marriage Act would not apply in a case of intended marriage where one of the parties is not Indian, who is not residing within the territories of India. It was further held in para 7 of the judgment in *Vivian Varghese's* case (supra) that the absence of a provision, for enabling Government of India to appoint Marriage Officers in its embassies abroad only disables an Indian citizen residing abroad from entering into a marriage in the Indian Embassy of that country in which he resides, etc. In that case



this Court directed that the application of the petitioner therein for taking steps for the intended marriage was directed to be accepted by the notified Registrar and notice was directed to be given by the respondent-Registrar concerned as required under the Special Marriage Act and the petitioner was permitted to contract the marriage as intended by him which shall be solemnized by the Registrar as per the provisions of the Special Marriage Act. It will be profitable to refer paras 5 to 9 of the judgment of this Court in *Vivian Varghese v. State of Kerala*, reported in 2015 (3) KLT 21, which read as follows:

*“5. A reading of the said notice would indicate that as per the Special Marriage Act, 1954 diplomatic and consular officers of the Embassies of India, abroad were appointed as Marriage Officers under the Special Marriage Act. The opinion of the Government expressed in Ext.P4 is that on a foreign citizen seeking registration of marriage with an Indian citizen, within the territories of India, the Government could get confirmation on the status of such foreign citizens from such Marriage Officers appointed in the Embassy. However, by introduction of Foreign Marriage Act, 1969, the provision for making Rules with respect to the diplomatic and consular officers and others as provided in Section 50 of the Act of 1954 was taken away. In such circumstance, there are no marriage officers as of now appointed by the Government of India, abroad. It was in such circumstance that now the public notice at Ext.P4 was issued, by which it is indicated that the Government is endeavouring to make suitable amendments, to facilitate the marriage of Indian citizens with foreign citizens within the territories of India.*

*6. Essentially a marriage cannot be kept in abeyance only by reason of such law having not been introduced. Then Foreign Marriage Act, 1969 is. “An Act to make provision relating to marriages of citizen of India outside India”. Here the petitioner, an Indian citizen intends a marriage with a foreigner within the territory of India. Further in Ext.P4 public notice, the decision in *Rajeev v. State of Kerala* [2001 (1) KLT 578], produced as Ext.P6 has been noticed. The declaration in the aforesaid decision remains as such*

*even now, as per the existing law, being the Special Marriage Act; section 6 of the Act, requires that when either of the parties to an intended marriage is not permanently residing within the local limits of the marriage officer, then the marriage officer of the district in which the other party has the residence should be informed of the marriage. This would operate only within the territories of India. The foreign citizen is not residing within India.*

*7. The public notice proceeds on a completely wrong premise. The absence of a provision, for enabling Government of India to appoint Marriage Officers in its embassies abroad only disables an Indian citizen residing abroad from entering into a marriage in the Indian Embassy of that country in which he resides. Also if an Indian citizen residing abroad enters into a marriage, within the territories of India, then probably there would be a requirement of sending the intimation to the Marriage Officer appointed in the Embassy at the place of residence of such Indian citizen to ensure that he does not enter into another marriage. But in the context of there being no Marriage Officers appointed, there can be no marriage contracted at the Embassy. (The reference to territory of India in this judgment is to the territories within its physical boundaries as distinguished from the Embassy in a foreign land.)*

*8. That is not the issue which has to be considered at present. A foreign citizen seeks to enter into a marriage with an Indian citizen within the territories of India. The foreign citizen has produced a document by which her status is clearly stated to be single. The application has been made by an Indian Citizen, the petitioner; who has permanent residence within the jurisdiction of the 3rd respondent. The Marriage Officer even if appointed in the Embassies abroad, would have no authority to conduct the marriage of a citizen of that country; unless it be contracted with an Indian Citizen.*

*9. In such circumstance, the application of the petitioner at Ext.P3 shall be accepted and notice shall be given by the 3rd respondent as required under the Act and the petitioner shall be permitted to contract the marriage as intended by him which shall be solemnised by the 3<sup>rd</sup> respondent as per the provisions of the Special Marriage Act. “*

A similar view has also been taken by this Court in the case ***Devika Raj v. State of Kerala & ors.***, reported in AIR 2015 (Ker) 226.

6. Now coming to the objections raised by the respondents based on Ext.P-6, it will be relevant to refer to the contents of Ext.P-6 which read as follows:

"രജിസ്ട്രേഷൻ ഇൻസ്പെക്ടർ ജനറലുടെ ആഫീസ്

പൊതു കുറിമാനം

ആർ.ആർ.3-25537/00

രജിസ്ട്രേഷൻ ഇൻസ്പെക്ടർ ജനറലുടെ ആഫീസ്  
തിരുവനന്തപുരം തീയതി 08/08/2014

വിഷയം : രജിസ്ട്രേഷൻ വകുപ്പ് - 1954 ലെ പ്രത്യേക വിവാഹ നിയമം-  
വിദേശികളുടെ വിവാഹം സംബന്ധിച്ച സർക്കുലർ റദ്ദ് ചെയ്യുന്നത്  
സംബന്ധിച്ച്.

- സൂചന:
1. നീകുതി (ഇ) വകുപ്പിലെ 11/12/2001 ലെ 6755/ഇ 3/01/റ്റി.ഡി. നമ്പർ കത്ത്.
  2. ഈ ആഫീസിൽ നിന്നുള്ള 19/03/2002 ലെ ആർ.ആർ.3-25537/2000-)o നമ്പർ സർക്കുലർ.
  3. ശ്രീ. പി.ജെ. ഘോഷിസിന്റെ 20/02/2012 ലെ നിവേദനം.
  4. നീകുതി (ഇ) വകുപ്പിലെ 16/07/2014 ലെ 8201/ഇ 3/2012/നി.വ. നമ്പർ കത്ത്
- സൂചനകൾ ശ്രദ്ധിച്ചാലും :

1954 ലെ പ്രത്യേക വിവാഹ നിയമ പ്രകാരം വിവാഹിതിരാകാൻ ഉദ്ദേശിക്കുന്ന വ്യക്തികളിൽ ഒരാൾ വിദേശ പൗരനാണെങ്കിലും അത്തരം വിവാഹങ്ങൾ നടത്തിക്കൊടുക്കണമെന്ന് സൂചന 1 പ്രകാരം സർക്കാർ നിർദ്ദേശം നൽകിയതിന്റെ അടിസ്ഥാനത്തിൽ മേൽ നിർദ്ദേശം പാലിക്കുന്നതിലേക്കായി ഈ ഓഫീസിൽ നിന്നും സൂചന 2 പ്രകാരം നിർദ്ദേശം നൽകിയിരുന്നു. മേൽ സർക്കുലർ പിൻവലിക്കണമെന്ന സർക്കാർ സൂചന 4 പ്രകാരം നിർദ്ദേശം നൽകിയിരുന്നതിനാൽ മേൽ സൂചന 2 ലെ കത്തിലൂടെ നൽകിയ നിർദ്ദേശം ഇതിനാൽ പിൻവലിച്ചതായി അറിയിക്കുന്നു.

താങ്കളുടെ വിശ്വസ്തൻ

രജിസ്ട്രേഷൻ ഇൻസ്പെക്ടർ ജനറലിനു വേണ്ടി"

Sec.4 of the Special Marriage Act, 1954 provides as follows:

*'Sec.4. Conditions relating to solemnization of special marriages.- Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:--*

- (a) neither party has a spouse living;*
- (b) neither party--*
  - (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or*
  - (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*
  - (iii) has been subject to recurrent attacks of insanity .*
- (c) the male has completed the age of twenty-one years and the female the age of eighteen years;*
- (d) the parties are not within the degrees of prohibited relationship. Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and*
- (e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.*

***Explanation.-** In this section, "custom", in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family.*

*Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied--*

- (i) that such rule has been continuously and uniformly observed for a long time among those members;*
- (ii) that such rule is certain and not unreasonable or opposed to public policy; and*
- (iii) that such rule, if applicable only to a family, has not been discontinued by the family.'*

Sec.4 is the basic provision in the said Act, which deals with eligibility conditions relating to solemnization of marriage. No prescription has been made in Sec.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. Therefore, it is only to be held that Ext.P-6 circular and the other circulars of the Government referred to therein have been issued by the respondents without comprehending the correct legal position and therefore it is only to be held that the provision in Ext.P-6 to the extent it seeks to restricts/prohibits the 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 ultravires and unenforceable.

7. Accordingly, it is held that it is for the petitioner to present the requisite application for the intended marriage with the aforesaid person before the 1<sup>st</sup> respondent-Sub Registrar, without any further delay and application in that regard shall be accepted and notice shall also be given by the 1<sup>st</sup> respondent-Sub Registrar in terms of the provisions contained in Sec.5 of the Special Marriage Act. The petitioner shall ensure that proper English translated version of Ext.P-5

is made available before the 1<sup>st</sup> respondent along with the original of Ext.P-5. The petitioner may also ensure that an affidavit is sworn to by his fiancée, Luisa Laskowski, inter alia indicating that she is single/unmarried, etc., and that she satisfies the eligibility conditions and does not incur any of the disqualifications for the solemnization of the marriage under the Special Marriage Act and affidavit in that regard may be sworn to before an authorized notary. The petitioner shall be permitted to contract the marriage as intended by him if the application/request is otherwise in order and there are no valid objections from any interested persons pursuant to the notice that may be put up in that regard, etc., and then the marriage shall be solemnized by the 3<sup>rd</sup> respondent as per the provisions of the Special Marriage Act, etc.

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

Sd/-

ALEXANDER THOMAS,  
Judge.

Bkn/-