

(2007) 07 KL CK 0052
In the High Court Of Kerala
Case No : W.P.C. No. 16788 of 2007

Deepak Krishna and Another	Vs	APPELLANT
District Registrar and Others		RESPONDENT

Date of Decision : 23-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Special Marriage Rules, 1958 — Rule 10, 5, 6, 7
Special Marriage Act, 1954 — Section 11, 13, 15, 16, 17

Citation : AIR 2007 Ker 257 : (2008) 1 DMC 34 : (2007) 3 ILR (Ker) 256 : (2007) 2 KLJ 714

Hon'ble Judges : K.S. Radhakrishnan, J; Antony Dominic, J

Bench : Division Bench

Advocate : D. Kishore, Anchal C. Vijayan, N.D. Premachandran, T.A. Unnikrishnan, Tom Jose, Nagaraj Narayanan, Murali Purushothaman, G.P. Shinod, Sunil Cyriac, Arun Raj, Varghese P. Chacko, C.P. Saji and Peeyus A. Kottam, for the Appellant; Benny Gervasiz, GP and P. Parameswaran Nair, Asstt. S.G., for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Question that is posed for consideration in all these cases is whether Section 15(f) and Section 16 of the Special Marriage Act, 1954, are mandatory provisions or directory provisions war ranting a liberal interpretation taking into consideration of the hardship and inconveniences caused to the parties.

2. A learned single Judge in Giby George and Another Vs. Marriage Officer (Principal District Registrar), interpreting Section 15(f) of the Special Marriage Act, 1954, took the view that a ceremonial marriage between persons who were residing within the jurisdiction of special Marriage Officer can be registered even if such ceremonial marriage was solemnized within 30 days of the filing of an application for registration. Learned Judge then gave a direction to the Marriage Officer to receive the application and also to register the marriage without

waiting for the period of 30 days. Further, the learned Judge also gave a direction to publish the factum of registration in the notice board with a rider that the registration is liable to be cancelled on any just and legal objections in accordance with law. The Marriage Officer was also directed to issue a certificate of marriage, within a specified time. Another learned single Judge of this Court had also earlier adopted the same course in *John Roji Vs. Marriage Officer*, . Learned Judge taking note of the urgency expressed by the parties, directed the Marriage Officer to issue a certificate of marriage within a week from the date of production of the copy of the judgment and ordered that if it is found that the petitioners are not entitled for registration of marriage, it would be open to the Marriage Officer to recall the certificate issued. The learned Judge did not accept the stand of Marriage Officer that the certificate of marriage could be issued only after the statutory period is over and after registering the marriage. Another learned single Judge of this Court in *W.P. (C) 10189/2004* however, rejected the prayer for registration of marriage before the expiry of one month period from the date of giving notice. Judgment of the learned Judge was affirmed by the Division Bench in *W.A. 675/2004* expressing the opinion that whatever be the practical problems and difficulties of the parties, this Court cannot compel the Marriage Officer to act against the provisions of the statute. But the impact of Sections 15 and 16 was not considered by the Bench. Another Division Bench of this Court in *Y. John Lukose and Another Vs. The District Registrar*, while interpreting Section 16 of the Act took the view that the marriage certificate can be issued in exceptional cases even before the expiry of 30 days. Bench however, granted the relief taking into consideration the special circumstances of that case.

3. Large number of cases are coming up before this Court seeking similar directions to the Marriage Officer to register marriage under Special Marriage Act waiving the period mentioned in Section 15(f) as well as u/s 16 of the Act pointing out various personal problems, hardship and inconvenience etc. faced by them. A learned Judge of this Court doubted the correctness of the view expressed in *Giby George's* case and the matter has been placed before us for an authorisation pronouncement on the various issues involved. We are called upon to examine in detail the scope of Sections 15 and 16 and other allied provisions of the Act to give a quietus to the various issues on which conflicting views have been expressed.

4. Special Marriage Act, 1954, is a Central Act enacted to provide a special form of marriage in certain cases and for the registration of such and certain other marriages and for divorce. Chapter II of the Act deals with solemnization of special marriages under the Act and chapter III deals with the registration of marriages celebrated in other forms. Section 4 of the Act falling under Chapter II deals with the conditions to be fulfilled for solemnization of marriages under the Act. Section 5 deals with the manner in which notice has to be given for the intended marriage under the Act. Section 7 enables a party to file objections, within 30 days for which notice has been published if there are any contraventions of the conditions mentioned in Section 4. Section 8 deals with the

procedure to be followed by the Marriage Officer on receipt of objection. Section 11 deals with the declaration by parties and witnesses, Section 13 deals with certificate of marriage.

5. We are in these cases primarily concerned with the provisions contained in Chapter III of the Act which deal with registration of marriages. Sections 15, 16, 17 and 18 are the provisions which deal with registration of marriages celebrated in other forms. Section 15(a) - (f) of the Special Marriage Act, 1954, is extracted hereunder for easy reference:

15. Registration of marriages celebrated in other forms - Any marriage celebrated whether before or after the commencement of this act, other than a marriage solemnized under the Special Marriage Act, 1872 (3 of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:

- (a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;
- (b) neither party has at the time of registration more than one spouse living;
- (c) neither party is an idiot or a lunatic at the time of registration;
- (d) the parties have completed the age of twenty-one years at the time of registration;
- (e) the parties are not within the degrees of prohibited relationship;
- (f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

(Emphasis added)

6. Petitioners have conceded that all of them have to fulfill the conditions stipulated in Section 15(a) - (e) for the registration of marriage under the Special Marriage Act. The point in dispute is whether it is mandatory that the parties should reside within the District of the Marriage Officer for a period of 30 days immediately preceding the date on which the application is made for the registration of the marriage. The learned single Judge in Giby George's case (*supra*), has taken the view that Clause (f) of Section 15 is only a directory provision and in appropriate cases, Marriage Officer has got the power to receive application even if the period stipulated therein had not been satisfied. A Division Bench of the Calcutta High Court had occasion to consider a similar issue *Sadhan Kumar Roy v. Saswati Roy (Banerjee)* AIR 1989 NOC 94 The Bench examined the scope of Section 5 vis-a-vis clause (f) of Section 15 of the Special Marriage Act. The Court held that where none of the parties resided within the territorial jurisdiction of Marriage Officer, who gave the certificate of marriage, the certificate of marriage will be without jurisdiction for contravention of Section 5

under which at least one of the parties to the marriage has to reside for a period of not less than 30 days immediately preceding the date on which notice of intended marriage is given. Court held as the certificate of marriage was granted without jurisdiction by the Marriage Officer in contravention of Section 5, marriage between the parties is to be declared void. The Court also opined that on the basis that violation of Clause (f) of Section 15 regarding the requirement of residence does not render a marriage null and void, it cannot be said that requirement of residence u/s 5 for solemnization of Special Marriage will have similar effect. Court held that the requirement of residence by at least one of the parties in Section 5 read with the Second Schedule of the Act is a mandatory requirement though the Court held the effect of non-compliance with these requirements varies as compared with the absence of compliance of the conditions for registration of marriages celebrated in other forms. Learned single Judge of the Allahabad High Court however struck a different note in Nirmal Dass Bose Vs. Km. Mamta Gulati, while interpreting Sections 5 and 6 of the Act, and held that "the non compliance of the requirement contemplated under Sections 5 and 6 of the Special Marriage Act is not by itself fatal but is only an irregularity which does not go to the root of the matter and cannot be taken to nullify a marriage in fact evidenced by the certificate of marriage contemplated under the Act."

7. Section 24 of the Act deals with void marriages. The said provision is also extracted herein:

(1) Any marriage solemnized under this Act shall be null and void (and may, on a petition presented by either party thereto against the other party, be so declared) by a decree of nullity if-

(i) any of the conditions specified in Clauses (a), (b), (c) and (d) of Section 4 has not been fulfilled; or

(ii) The respondent was impotent at the time of the marriage and at the time of the institution of the suit.

(2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of Section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in Clauses (a) to (e) of Section 15.

(Emphasis added)

8. Sub-section (2) of Section 24 says that Section 24 as such would not apply to any marriage deemed to be solemnized under the Act but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in Clause (a) to (e) of Section 15. In other words violation of Clause (a) to (e) as such would not make the marriage solemnized in other forms void but only makes the

registration invalid. In Sub-section (2) of Section 24, Clause (f) of Section 15 has been conspicuously omitted, meaning thereby noncompliance of Clause (f) of Section 15 as such would not render the deemed solemnization of marriage void under the Act nor will it render the registration granted invalid. Under such circumstances, we are inclined to take the view that Clause (f) of Section 15 is only a directory provision, and the failure to follow the said clause strictly would not make the registration of the marriage under the Act invalid. Failure to follow that clause does not render a thing only done in disobedience of it, a nullity. It is true law that a directory provision as such gives no discretionary power to do a thing not directed, Even if a provision is directory in nature, it should be substantially complied with which depends upon the facts and circumstances of each case. Judgment of the learned single Judge in Giby George's case to the extent it holds that Clause (f) of Section 15 is directory, is therefore upheld.

9. Let us now examine the scope of Section 16 which deals with the procedure in registration. Section is extracted hereunder for easy reference:

Upon receipt of an application signed by both the parties to the marriage for the registration of their marriage under this Chapter, the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objections and after hearing any objection received within the period-shall, if satisfied that all the conditions mentioned in Section 15 are fulfilled enter a certificate of the marriage in the Marriage Certificate Book in the form specified in the Fifth Schedule, and such certificate shall be signed by the parties to the marriage and by three witnesses.

(Emphasis added)

10. The Marriage Officer on receipt of the application filed u/s 15 of the Act has to give a public notice in such manner as may be prescribed under the rules. The Marriage Officer is duty bound to give 30,days for filing objections. The Marriage Officer has to hear the objections received within the time stipulated and only if all the conditions mentioned in Section 15 are satisfied, he shall enter the Certificate of Marriage in the Marriage Certificate Book, in the form specified in the fifth Schedule. Certificate of Marriage has to be signed by the parties to the marriage and three witnesses. Petitioners have raised a contention that thirty days time stipulated in Section 16 is not a mandatory provision and is liable to be waived, in appropriate cases taking into consideration the hardships and inconveniences the parties are put to, like necessity of leaving the country for avocation, higher studies etc. Petitioners have also suggested that those who want to leave the country be permitted to sign the certificate in piece-meal within the 30 days period and the certificate need be issued only after obtaining the signature of the other spouse and three witnesses after thirty days time. This Court taking into consideration the hardship and inconvenience projected by the parties used to give several orders directing the Marriage Officer to waive the time limit not only for presenting the application u/s 15, but also for registration of the marriage u/s 16 of the Act. Marriage Officer, however in many cases, has

taken up the stand that he has no discretion to waive the time limit specified either u/s 15 or under 16 of the Act.

11. Let us now examine whether the procedure laid down in Section 16 of the Act is mandatory, directory or discretionary. Section 16 enables the Marriage Officer to enter a certificate of marriage in the Marriage Certificate Book in the Form specified in 5th Schedule signed by the parties and three witnesses and the Marriage Officer. Once the certificate of Marriage is entered in the Marriage Certificate Book the marriage shall from the date of such entry be deemed to be a marriage solemnized under the Act and the children born after the date of ceremony of marriage shall in all respects be deemed to be and always to have been the legitimate children of their parents.

12. The Government of Kerala has enacted the Kerala Special Marriage Rules, 1958, in exercise of the powers conferred u/s 50 of the Special Marriage Act, 1954. Rules deal with the procedure to be followed in the case of solemnization and registration of marriage under the Act. The manner and the form in which application has to be preferred and the manner in which the objections have to be considered u/s 16 are dealt with in Rule 7 read with Rule 6 of the Rules. Rule 7 is extracted herein:

(a) An application u/s 15 for the registration of a marriage celebrated in other forms shall be in Form III.

(b) Such application shall be presented to the Marriage Officer by any one of the parties in person or sent to him by registered post.

(c) Notice of the application under Sub-rule (a) shall be given by the Marriage Officer by exhibiting a true copy thereof under his seal and signature in a conspicuous place outside his office. The notice shall also state that objections, if any, to the registration of the marriage should be preferred by the objector in person orally or in writing to the Marriage Officer within thirty days from the date on which the notice is exhibited.

(d) Any objection received within the said period together with the fee prescribed there after in Rule 10 shall be recorded and the enquiry in respect thereto made as nearly as possible in the manner prescribed in Rule 6.

13. Sub-rule (a) of Rule 7 states that an application u/s 15 for the registration of marriage celebrated in other forms shall be in Form III. As per that rule, the parties have to make a declaration that they have fulfilled the particulars mentioned in the statutory form which is as prescribed u/s 15 of the Act. On receipt of such an application in Form III, Marriage Officer shall give a public notice as provided under Rule 6(d) in the statutory form I or II as the case may be. The public notice shall also state that the objections, if any, to the registration of the marriage be preferred by the objector in person orally or in writing to the Marriage Officer within 30 days from the date on which the notice is exhibited. Rule 10 prescribes the fees which shall be levied by the Marriage

Officer for every notice or application for registration of marriage preferred by the parties to the marriage. For recording an objection also the objector has to pay the prescribed fees, so also for every enquiry into an objection. For every notice and for every summons to a witness to appear and give evidence and produce documents, objector has to pay the fee. Sub-rule (d) of Rule 7 says that any objection received within the period of 30 days together with the fee prescribed, therefore in Rule 10 shall be recorded and the enquiry in respect thereto made as early as possible in the manner prescribed in Rule 6. Rule 6 has also some relevance and hence it is extracted below:

(a) Where an objection to the solemnization of an intended marriage together with the fee prescribed therefore in Rule 10 has been received and recorded by the Marriage Officer, he shall, unless by an order in writing he rejects the objection summarily on the ground that the objection is not based on contravention of any of the conditions specified in Section for enquiry into the objection on a day to be fixed by him. The day so fixed shall not be later than thirty days from the date of the objection.

(b) The Marriage Officer shall, at the time of recording the objections ascertain from the objector whether he has any documents on which he relies or whether he desires any witness or witnesses to be examined on his behalf. If the objector states that he has, the Marriage Officer shall require the objector to produce the documents or the witnesses on the day fixed for the enquiry. If the objector desires that summonses shall be issued to the witnesses to appear and give evidence or to produce any document, the Marriage Officer shall issue such summonses to the witness cited, on payment of the process fee prescribed therefore in Rule 10 and the reasonable expenses of travelling and subsistence of the witnesses. The enquiry relating to the objection including the production of documents and the examination of witnesses shall be completed and the decision of the Marriage Officer arrived at within the period of thirty days specified, in Section 8. If within the prescribed period, the documents are not produced and witnesses do not appear before the Marriage Officer, the Marriage Officer shall take a decision without waiting for the production of such documents or the appearance of such witnesses.

(c) The Marriage Officer shall also give notice of the date and time fixed for the enquiry to the parties to the intended marriage.

(d) The notice or summons to any party or witness under this rule shall be in Form I or Form II as the case may be and shall be sent by registered post.

(e) On the date fixed for the enquiry or on any adjourned date, the Marriage Officer shall record in his own hand the evidence given in the course of the enquiry, his decision on the objection and the reasons thereof.

(Emphasis added)

14. Clause (b) of Rule 6 says the "The Marriage Officer shall, at the time of

recording the objection, ascertain from the objector whether he has any documents on which he relies or whether he desires any witness or witnesses to be examined on his behalf. Detailed procedure has been laid down in Rule 6(b) with regard to the manner in which the Marriage Officer has to consider objections and to arrive at a satisfaction that all the conditions mentioned in Section 15 are fulfilled so as to enter the certificate of Marriage in the Marriage Certificate Book. Only after following the procedure laid down in Section 16 read with Rules 5 and 7 of Kerala Special Marriage Rules, 1958, Marriage Officer would be able to know whether the parties have satisfied all the conditions mentioned in Section 15.

15. The Marriage Officer while taking a decision u/s 16 read with Rule 7 and 6(b) is exercising a quasi judicial function. Rule obliges the Marriage Officer to record in his own handwriting the evidence and his decision on the objection and the reasons therefor. On being satisfied that all the conditions mentioned in Section 15 are fulfilled he shall enter a Certificate of Marriage in the Form specified in the Fifth Schedule to the Act and such form shall be signed by the parties to the marriage and three witnesses. The manner in which the Marriage Officer, husband and wife and three witnesses have to sign the certificate of marriage and the mode in which declaration has to be made, by the parties have been dealt with in the statutory form, prescribed in the fifth schedule to the Act. A declaration, that a ceremony of marriage has been performed between the parties and that they have been living together as husband and wife since the time of marriage and that in accordance with their desire to have their marriage registered under the Act, on a particular date, has to be made jointly by the husband and wife in the presence of the Marriage Officer and three witnesses. Requirements in our view are statutory in nature and mandatory in character. Neither the Marriage Officer nor the parties can deviate from the procedure statutorily laid down.

16. We have noticed that the non-compliance with the conditions specified in Clause (a) to (r) would render the registration of the marriage ineffective, so also the deemed solemnization of the marriage u/s 18 of the Act. Consequences of failure to comply with the prescribed procedure is provided in the statute itself. Therefore, there can be no manner of doubt, that such statutory requirements are to be considered mandatory. It is a trite law that a command to do a thing in a particular manner would imply a prohibition to do it in any other manner. When the legislature bestows statutory power on a public authority to do a thing in a particular way, the manner of doing the thing is mandatory or jurisdictional.

17. Crawford's Interpretation of Law (1989 reprint Page 515) states that if the provision directs acts or proceedings to be done in a certain way and indicates that a compliance with such provisions is essential to the validity of the act or proceedings, or requires some antecedent and pre-requisite conditions to exist prior to the exercise of the power, or be performed before certain other powers can be exercised, the statute may be regarded as mandatory. Craies on Statute

Law (6th Edn.) Page 63 states that when a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to attain the performance, those prescribed formalities which are essential to the validity of the thing done are called imperative or absolute, but those which are not essential and may be disregarded without invalidating the thing to be done are called directory. See also Maxwell on Interpretation, 12th Edn. Page 314. See also Rajsekhar Gogoi Vs. State of Assam and Others, Secretary of State v. Kuchwar Lime and Stone Co. Ltd. AIR 1938 PC 201, K. Kamaraja Nadar Vs. Kunju Thevar and Others, . Procedure laid down in Section 15 read with Rule 6(b) in our view, are mandatory in character, and are to be strictly followed.

18. Section 16 has stipulated a time frame for the public to respond, so as to fulfil certain statutory requirements, then the designation of time is a limitation or check on the public authority. Purpose of granting specified time of 30 days in Section 15 is to ascertain whether the parties have complied with the conditions laid down in Section 15 of the Act. If the conditions mentioned therein especially (a) to (e) of Section 15 are not fulfilled, the registration of marriage under the Act and the deemed solemnization of marriage u/s 18 of the Act will have no legal effect as per Section 24(2) of the Act. Consequence of non-compliance under Sections 15, 16, Rules 6 and 7 is provided in the Act itself. In our view the time clause of thirty days prescribed u/s 16 is a matter of substance, non-observation of which will result in the object of the provision being frustrated. Nature of the acts to be performed and the phraseology of the statute indicate an intention on the part of legislature to exact a literal compliance with the time stipulated, Contrary view, would operate unfairly in prejudicing the rights of persons who pro pose to file objections on the basis of the public notice within the statutorily stipulated time. We are therefore, of the considered view that the time frame of 30 days prescribed u/s 16 is a mandatory clause, which is not liable to be waived.

19. Let us now examine whether on a plea of hardship or inconvenience can a Court interpret a statutory provision in a manner inconsistent with its expressed language. The Apex Court in Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore, held that merely because a law causes hardship it cannot be interpreted in a manner so as to defeat its object. Courts are not concerned with the legislative policy and with its results, whether injurious or otherwise by giving effect to the language used. The Apex Court in The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI), held that a plea of inconveniences and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure. It is trite law, that where the meaning of the statute is clear and explicit, but if any hardship or inconvenience is felt, it is for the Parliament to take appropriate steps to amend the law and not for the Courts to legislate under the guise of interpretation. Hard cases make bad law and the plea of hardship and inconvenience has been said to be a dangerous and misleading one and if acceded to, would lead the Court to forbidden territories.

20. Legislature, in our view, has fixed the time frame of thirty days u/s 16 therefor, the public can respond by filing objections if any, and the Marriage Officer who has to act as a quasi judicial authority would be in a better position to examine the materials furnished and if satisfied that all the conditions stipulated in Section 15 have been complied with, enter a certificate of marriage. Legislature in its wisdom felt that thirty days" time should be given u/s 16 to the public to file objections which in our view cannot be tinkered with by the Marriage Officer or by this Court sitting under Article 226 of the Constitution of India.

21. The Apex Court has highlighted the necessity of registering all marriages of Indian citizens belonging to various religions in their respective States immediately after the solemnization of the marriage in its judgment in Smt. Seema Vs. Ashwani Kumar, . Following the above decision of the Apex Court, State Government have published draft rules called "the Kerala Registration of Marriages (Common) Rules, 2006" which was published in the Kerala Gazette Extra Ordinary No. 1835 dated 16-11-2006. Learned Government Pleader has informed us that the same has not been given effect to so far. We feel much of the hardships and inconveniences caused to the parties could be redressed if the above mentioned Rules are given effect to at the earliest. Government would bestow their serious attention to give effect to the above rules at the earliest.

22. We, therefore, hold that the procedure stipulated u/s 16 is mandatory in character and no discretion is cast on the Marriage Officer to deviate from those statutory procedure. Under such circumstances, we are inclined to overrule the judgment in Giby George's case to the extent it holds that the Marriage Officer need not give 30 days time for registration of the marriage u/s 16 of the Act so also the judgment in John Rogi's case. Principles laid down by the Division Bench, in John Lukose's would be confined to the facts and circumstances of that case. Judgment of the Division Bench in W.A. 675/2004 is affirmed. We however, hold that the marriages which have already been registered by the Marriage Officers as per the directions of this Court and certificates issued would stand subject to the provisions contained in Sub-section (2) of Section 24 of the Act.

Reference is answered as above and the writ petitions will stand dismissed with the above direction.