
(2021) 09 KL CK 0088

In the High Court Of Kerala

Case No : Writ Petition (C).Nos. 2072, 15244, 16281, 17686, 18260 Of 2021

Dhanya Martin

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 09-09-2021

Acts Referred:

Special Marriage Act, 1954 — Section 13

Citation : (2021) 09 KL CK 0088

Hon'ble Judges : A.Muhammed Mustaque, J;Dr.Kauser Edappagath, J

Bench : Division Bench

Advocate : A.Ahzar, N.Manoj Kumar

Judgement

A.Muhammed Mustaque, J

1. These cases have come up before us to consider a question of importance having far reaching consequence in public governance in the era of technology and digital governance. We, in these matters, are required to decide upon a question of application of existing law to govern relationship in bricks and mortar system to govern the relationship in virtual reality. We cannot hurriedly decide this question. Taking note of the urgency on which we have to address relatable to the plight of the litigants before us, we proposed to issue this interim order.

2. The short question having multitudinal dimension in public governance is this - can solemnisation of marriage or registration of marriage as referred to in the Special Marriage Act, 1954 be permitted through online mode or not?

3. A learned Single Judge set out the details in his detailed reference order on 25/8/2021. The learned Single Judge could have decided the matter, but referred to us taking note of the contrary views taken by another learned Single Judge in Dioncey Augustine v. State of Kerala [2019 SCC Online Kerala 13112] and Shitha V.K. v. The District Registrar (General) [W.P.(C).No.3421 of 2021]. The learned Single Judge with all clarity and exposition of law and interpretation of statute was of the firm view that Special Marriage Act is an ongoing statute and

provisions therein will have to be interpreted in tune with the time. The learned Single Judge placed reliance on the proposition of law laid down in *State of Maharashtra v. Dr.Praful B.Desai* [(2003) 4 SCC 601]. We are in respectful agreement with the learned Single Judge and, for the same reasons set out in the order dated 25/8/2021, we uphold this view. However, we will fail in our duty if we do not address the consequence that would be followed on a direction to the Marriage Officer to permit solemnisation and registration of marriage through video conferencing or through online mode. This is for the simple reason that there are no mechanism in place governing implementation of statutory provision in the light of interpretation of law and the meaning assigned to the law in the era of technology and digital governance. If the public administration is not modernised - its structure and function, the law would remain incongruous to defeat the objectives it required to secure.

4. We have to consider three questions in these matters which are formulated as follows:

- i. whether the statutory provisions under the Special Marriage Act covers solemnisation or registration of the marriage through online?
- ii. Do citizens have right to demand digital service in matters affecting well being or related to life?
- iii. Is the right to marriage a part of right to life or not?

5. In regard to the first question, we have to answer the same in this interim order itself in the light of the reasons referred in the reference order. We will elaborately deal with the above point also while pronouncing the final judgment along with the questions referred to above. Considering the urgency involved, we pass this interim order with the following directions:

I. The Marriage Officers under the Special Marriage Act in all these cases are directed to solemnise marriage or register the marriage, as the case may be, through online subject to the conditions hereafter referred:

- i. The witnesses required for solemnisation of marriage shall be present before the Marriage Officer.
- ii. The witnesses shall identify the parties who are online.
- iii. The copies of passport or any other public documents in respect of the parties who appear online shall be provided to the Marriage Officer for identification by the Marriage Officer.
- iv. Wherever signature of parties are required, that shall be affixed by the authorised Power of Attorney of the parties or any agent who produce any other official documents recognised under the Indian law on behalf of the parties who appear online.

II. All other necessary formalities as required by law shall be complied with

before solemnisation of marriage.

III. The Marriage Officer shall fix the date and time and convey the same to the parties in advance.

IV. The Marriage Officer is free to fix the mode of online platform.

V. The Marriage Officer is directed to comply with the directions as expeditiously as possible on completion of the statutory formalities.

VI. On solemnisation of marriage, the certificate of marriage shall be issued in the manner as referred to in Section 13 of the Special Marriage Act.

6. These cases are posted for further hearing to await views of the Central Government and State Government to find technological solution within the legal frame work to support online solemnisation or registration of the marriage.

7. In the meanwhile, the learned State Attorney is directed to place the views of the Government and experts/public officials in light of the interaction we had with the Principal Secretary of IT Department, Shri Mohammad Safarulla, I.A.S. and IT Mission Director, who came online based on the request made by us.

8. The proceedings conducted for registration or solemnization of the marriage shall be recorded in the official records. In view of the fact that the matters are pending before this Court and also taking note of Covid - 19 situation in the State and the Country, the outer time limit which has already been expired for solemnisation or registration of the marriage, will stand extended by this order, until the time fixed by the Marriage Officer.

Post on 23.9.2021.