
(2021) 06 KL CK 0415

In the High Court Of Kerala

Case No : Writ Petition (C) No. 12456 Of 2021

Joby Chacko

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 29-06-2021

Acts Referred:

Special Marriage Act, 1954 — Section 4(a), 5
Notaries Act, 1952 — Section 8(1)(e)

Citation : (2021) 06 KL CK 0415

Hon'ble Judges : P.B.Suresh Kumar, J

Bench : Single Bench

Advocate : S.Saju, A.V.Sajan, Neelanjana Nair, Pooja Sebastian, Princy Xavier

Final Decision : Allowed

Judgement

P.B.Suresh Kumar, J

1. Petitioner, an Indian citizen, intends to marry Ms.Sherlyn Verghese, a citizen of America. On 31.5.2021, the petitioner gave notice of his intended

marriage online to the third respondent in terms of Section 5 of the Special Marriage Act, 1954 (the Act). It is stated by the petitioner that on receipt

of the notice, the third respondent has directed the petitioner to produce a few documents, and the petitioner has produced all the documents required

by the third respondent. It is alleged by the petitioner that later, the third respondent has directed the petitioner to produce an affidavit of his fiancée

attested by a competent officer in the Embassy or Consulate of the United States of America, to the effect that she does not have a spouse living.

According to the petitioner, such a condition is not insisted in the case of Indian citizens, and the marriages are permitted to be solemnized and

registered under the Act after obtaining notarized affidavits from the parties

concerned that he/she does not have a spouse living. It is stated by the petitioner that though the fiancée of the petitioner is prepared to submit a notarized affidavit, the third respondent is not prepared to accept such an affidavit as she is a foreign national. The case set out by the petitioner in the writ petition is that the stand aforesaid of the third respondent is arbitrary, unreasonable and unjust. The petitioner therefore, seeks directions to the third respondent to accept the notice of the intended marriage given by him and issue certificate of registration of the marriage in terms of the Act.

2. The learned Government Pleader submitted that in the light of Section 4(a) of the Act, the third respondent, the Marriage Officer under the Act is duty bound to ensure that neither party to the intended marriage has a spouse living, before permitting solemnization of the marriage. It was conceded by the learned Government Pleader that notarized affidavits of the parties are normally insisted to ensure compliance of the requirement under Section 4(a) of the Act. It was, however, pointed out that in so far as the fiancée of the petitioner is a foreign national, her signature in the affidavit cannot be attested by a notary public in India and it is on account of the said reason that an affidavit attested by the competent authority in the Embassy or Consulate of the United States of America was insisted for permitting solemnization of the marriage. It was also pointed out by the learned Government Pleader that yet another reason for insisting the affidavit attested by the competent authority in the Embassy or Consulate is that the notary public in India may not be in a position to ensure the correctness of the statements and affirmations made by a foreign national.

3. It is seen that there existed a doubt earlier as to whether a marriage between an Indian citizen and a foreign national could be solemnized in terms of the provisions of the Act, and the said question was resolved by this court in *Rajeev v. State of Kerala*, 2001(1) KLT 578. In large number of cases disposed of later following the dictum in *Rajeev*, this court directed that in order to comply with the conditions relating to solemnization of marriage including the condition stipulated in Section 4(a), an affidavit attested by a notary public can be secured from the foreign national. W.P.(C) Nos.22941 of 2018 and 249 of 2019 are two among such cases. Of course, the question whether a notary public in India is competent to attest the signature of a foreign national and the question whether he would be in a position to ensure the

correctness of the statements and affirmations made in the affidavit have not been considered in those cases.

4. There is no inhibition in law for a notary public in India attesting an affidavit sworn to by a foreign national after ensuring the identity of the person concerned on the basis of the passport or other similar documents. Section 8(1) (e) of the Notaries Act, 1952 empowers a notary to administer oath to, or take affidavit from, any person. Similarly, when a notary public attests the affidavit, he does not take upon himself the responsibility of the correctness of the statements or affidavits sworn to by the signatory. The purpose of attestation is only to ensure that the signature in the document is one put by the person who purported to have put the signature in the document. In other words, the reasons stated by the Marriage Officer for insisting the attestation of the signature in the affidavit of the fiancée of the petitioner by the competent officer in the Embassy and Consulate of the United States of America cannot be accepted.

In the result, the writ petition is allowed and the third respondent is directed to accept the notice of the intended marriage given by the petitioner and register the marriage of the petitioner with his fiancée referred to in the writ petition by accepting from the fiancée of the petitioner an affidavit attested by a notary public to the effect that she satisfies the eligibility conditions and does not incur any disqualification for the solemnization or registration of the marriage under the Act.