
(2014) 03 KL CK 0046

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 5911 of 2014

Sidharth Swaminathan

APPELLANT

Vs

Sub Registrar

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Special Marriage Act, 1954 — Section 15, 16, 18, 24(2), 5

Citation : AIR 2014 Ker 195 : (2014) 3 DMC 237 : (2014) 3 ILR 595 : (2014) 3 KLJ 378 : (2014) 3 KLT 326

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : Mathew John (K) and Domson J. Vattakuzhy, Advocate for the Appellant; M.J. Rajasree, Sr. Government Pleader, Advocate for the Respondent

Judgement

P.N. Ravindran, J.—The first petitioner is an Indian citizen who is stated to be employed abroad. The second petitioner is a citizen and permanent resident of United Kingdom. It is stated that the marriage between the petitioners will be solemnised in accordance with the Hindu rites between 1.3.2014 and 3.3.2014 at Kumarakam in Kerala, that as they intend to reside in United Kingdom after marriage they require a marriage certificate issued by the Marriage Officer appointed under the Special Marriage Act, 1954 and for that purpose they have filed Ext.P5 application for registration of their marriage under S. 15 of the Special Marriage Act, 1954, (hereinafter referred to as "the Act" for short) before the respondent Sub-Registrar/the Marriage Officer appointed under the Act, by sending the application by registered post acknowledgment due on 3.2.2014. In this Writ Petition filed under Art. 226 of the Constitution of India on 28.2.2014, the petitioners pray for an order directing the respondent Sub-Registrar to register their marriage pursuant to Ext.P5 application and to issue the marriage certificate without further delay. The petitioners have averred that they have already booked tickets to United Kingdom, that they have to be back in the United kingdom on 9.3.2014, that the period of 30 days stipulated in S. 16 of the

Act is not mandatory and can be waived by the Sub-Registrar in the interests of justice as held by a Division Bench of this Court in Y. John Lukose and Another Vs. The District Registrar, and by a learned single Judge of this Court in Giby George and Another Vs. Marriage Officer (Principal District Registrar), and in such circumstances, the respondent should register their marriage which is proposed to be solemnised on 3.3.2014 without waiting for the expiry of the period of 30 days from the date of Ext.P5 application.

2. I heard Sri. Mathew John, learned counsel appearing for the petitioners and Smt.M.J.Rajasree, learned Senior Government Pleader appearing for the respondent. Sri. Mathew John, learned counsel appearing for the petitioners contended relying on the decision of a Division Bench of this Court in Y. John Lukose and Another Vs. The District Registrar, and the decision of a learned single Judge of this Court in Giby George and Another Vs. Marriage Officer (Principal District Registrar), that in exceptional cases, as in the case on hand, a marriage solemnised otherwise than under the Act can be registered under S. 16 of the Act, before the expiry of the period of 30 days from the date of the application. The learned counsel contended that unless the petitioners report back in United Kingdom on 9.3.2014 they will lose their employment thereby visiting them with adverse consequences, that Exts.P1 and P2 marriage invitations prove the fact that the marriage between them was solemnised on 3.3.2014 at Kumarakam in Kerala, that they have jointly submitted an application for registration of their marriage by post and therefore, as the bona fides of the application is spelt out from the attendant circumstances, the Sub-Registrar ought to have waived the notice period of 30 days, registered their marriage and issued the marriage certificate.

3. Per contra, Smt. M.J. Rajasree, learned Senior Government Pleader appearing for the respondent invited my attention to the decision of a Division Bench of this Court in Deepak Krishna and Another Vs. District Registrar and Others, and submitted that the Division Bench has held that the principles laid down by this Court in Y. John Lukose and Another Vs. The District Registrar, would be confined to the facts and circumstances of that case, overruled the decision of the learned single Judge of this Court in John Roji Vs. Marriage Officer, to the extent it holds that the Marriage Officer need not wait for 30 days and the decision in Giby George v. Marriage Officer (2007(2) KLT 270), affirmed the judgment of the Division Bench in W.A. No. 675 of 2004 and held that the procedure prescribed in S. 16 of the Act is mandatory and gives no discretion to the Marriage Officer to deviate from the prescribed procedure and therefore, the petitioners cannot seek or be granted a writ in the nature of mandamus commanding the respondent Sub-Registrar to register their marriage even before the notice period of 30 days has expired. The learned Senior Government Pleader also submitted that though the original of Ext.P5 application was received by the respondent by post on 6.2.2014, the requisite fee was paid only on 11.2.2014, that it was entered in the register only on that day and therefore, as the application was defective till the prescribed fee was paid, the period of 30 days prescribed in S. 16 of the Act

would begin to run only from 11.2.2014 and before the expiry of the period of 30 days computed from 11.2.2014, the petitioners cannot insist on their marriage being registered.

4. I have considered the submissions made at the Bar by the learned counsel on either side. I have also gone through the pleadings and the materials on record. The very same issue came up for consideration before a learned single Judge of this Court in W.P.(C) No. 10189 of 2004. The marriage between the petitioners in that Writ Petition was solemnised on 3.2.2002. Later, with a view to travel to Germany for the purpose of undergoing studies there, they submitted an application dated 20.3.2004 before the Marriage Officer and Sub-Registrar, Edappally under S. 15 of the Act to have their marriage registered. They thereafter filed W.P.(C) No. 10189 of 2004 in this Court on 23.3.2004 praying for a writ in the nature of mandamus commanding the Sub Registrar/Marriage Officer to register their marriage on or before 1.4.2004 and to issue the marriage certificate. Though before the learned single Judge who heard W.P.(C) No. 10189 of 2004, the decisions of this Court in W.P.(C) Nos. 9226 of 2004 and 6041 of 2004 were pressed into service, the learned single Judge declined to grant the relief prayed for on the ground that no principle of law which binds as a precedent has been laid down in the said decisions. The learned single Judge dismissed W.P.(C) No. 10189 of 2004 by judgment delivered on 24.3.2004 holding that the Marriage Officer who is a statutory functionary is bound by the provisions of the Statute and he can register the marriage only after the expiry of the period of one month from the date of the notice. The judgment in W.P.(C) No. 10189 of 2004 is extracted below in full:

"The petitioners are husband and wife. They got married on 3.2.2002 at St. Martin's Church, Palarivattom according to the Christian rites. The first petitioner has got admission in Colonin University, Germany for doing Ph.D. course in Molecular Biology. He proposes to take his wife also with him. But the German Government will accept only the marriage certificates issued by the Government and not by any Church. Therefore, the petitioners have given notice to register their marriage under the Special Marriage Act, 1954. Ext.P1 is the notice dated 20.3.2004. As per the provisions of the said Act, a marriage can be registered only after 30 days of giving the notice. The outer time limit for registration is 2 months from the date of expiry of one month's notice. The petitioners submit, the first petitioner has to leave for Germany immediately and he cannot wait for one month. Therefore, they pray they may be permitted to register their marriage without completing one month from the date of giving notice. Seeking appropriate directions in this regard to the respondent, this Writ Petition is filed. The respondent is a statutory functionary. He is bound by the provisions of the statute. In other words, he can register a marriage only after one month's period from the date of giving notice. Therefore, the respondent does not owe any duty to the petitioners to register their marriage before the notice period is over. The petitioners do not have any legal right also in this regard. Therefore, the prayer of the petitioners cannot be granted. But, the learned counsel for the

petitioners brought to my notice, two decisions in W.P.C. Nos. 9226/04 and 6041/04, directing registration of marriage even before the completion of the notice period. But, no principle is laid down in those judgments, which binds as a precedent. Therefore, I feel that even a reference of this Writ Petition to the Division Bench is unnecessary. Accordingly, the Writ Petition fails and it is dismissed."

Though the petitioners in W.P.(C) No. 10189 of 2004 carried the matter in appeal by filing W.A. No. 675 of 2004, it was dismissed by the Division Bench by judgment delivered on 30.3.2004. The, Division Bench held that "Whatever be the practical problems and difficulties of the appellants, this Court cannot compel the respondent to act against the provisions of the statute."

5. The very same issue again came up for consideration before a learned single Judge of this Court in John Roji Vs. Marriage Officer, . The relief sought therein was to dispense with the statutory notice and to issue the marriage certificate. The marriage in that case was solemnised in accordance with Christian rites. The learned single Judge before whom the Writ Petition came up for hearing directed the respondent to take a sworn statement from the petitioners, register the marriage and issue the marriage certificate to the petitioners within a week from the date of production of a copy of the judgment.

6. The very same issue again came up for consideration before this Court in W.P. (C) No. 25062 of 2006. The marriage in that case was solemnised on 11.10.1993 and two children were born in that marriage. In the year 2006, the husband got employment in Italy. The parties to the marriage thereupon submitted an application dated 20.9.2006 before the District Registrar, Kollam under S. 15 of the Act for registration of their marriage. Contending that the husband will not be in a position to travel to Italy in time unless the period of 30 days stipulated in S. 16 of the Act is waived, the parties to the marriage filed W.P.(C) No. 25062 of 2006 in this Court seeking a writ in the nature of mandamus commanding the District Registrar, Kollam to consider the application for registration of their marriage, register the marriage and issue the marriage certificate before 29.9.2006. The Writ Petition which was filed on 22.9.2006 was dismissed by a learned single Judge of this Court on the ground that there is nothing in S. 16 of the Act, to show that it is directory or that different interpretations can be adopted depending on the circumstances and that this Court cannot direct the respondent to waive a statutory condition requiring 30 days notice for registering a marriage under the Act. The relevant portion of the judgment of the learned single Judge in W.P.(C) No. 25062 of 2006 is extracted below:

"3. I have heard the learned counsel for the petitioner as also the learned Government Pleader appearing for the respondent. S. 16 of the Special Marriage Act reads thus:-

"16. Procedure for registration- 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 that period, shall, if satisfied that all the conditions mentioned in S. 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."

I do not find anything therein to hold that S. 16 is directory. I cannot even concede the argument of the learned counsel for the petitioners that at least in the case of marriages, which have been already held long ago, Which are sought to be registered under the Special Marriage Act, S. 16 should be held to be not mandatory. S. 16 is incorporated in the Act with a specific purpose. There is nothing therein to show that the same is directory or that different interpretations can be adopted depending on the circumstances for deciding whether the direction in S. 16 is mandatory or directory. According to me, this court cannot direct the respondent to waive a statutory condition requiring 30 days of notice for registering a marriage under the Act. Therefore, I do not find any merit in the contention of the petitioners and the Writ Petition is accordingly dismissed."

7. On appeal therefrom, a Division Bench of this Court in Y. John Lukose and Another Vs. The District Registrar, held as follows:

"7. In the matter of registration of marriage, the Act refers to two situations. One is in respect of solemnization of Special Marriages, as coming under Chapter II of the Act. Notice of intended marriage has to be there in the prescribed form and publication is mandatory. Thereby third parties get opportunity to raise objections about the proposed marriage. Chapter III of the Act, however, refers to registration of marriage celebrated in, other forms. It could be seen from the Statement of Objects and Reasons that one of the intention in bringing the enactment to give opportunity to register the marriages and thereby confer benefits under the Act to the needy. Of course, the procedure for registration, spoken to by S. 16, refers to the notice, but conspicuously the detailed formalities as prescribed for solemnization of a marriage are not there. This may lead to a presumption that the application and the registration is formal in nature and intended to ensure that there is no attempt to over reach the stringent stipulations, which are preconditions for a valid marriage, and there is no trifling with solemnity of marital relations.

8. We are satisfied that the present case, on facts, requires to be treated as a special case, as the counsel for the appellants has been able to highlight the extreme urgency in the matter. It is stated that the couple have two children. Prima facie the request therefore for a relaxation is not found objectionable.

9. The attempt should be to ensure that bona fides is spelt out. Therefore, we direct that if the appellants make available sufficient materials to show the

parentage of the two children, referred to in the petition, the respondent will have authority to proceed with the application forthwith. We think the rest of the conditions are thereby automatically taken care of. If such materials are placed, without waiting for the lapse of notice period, taking notice of the appellants' requirement to depart on 29th September, 2006, appropriate certificate may be issued to them, as envisaged under Chapter III of the Act."

It is relying on the aforesaid decision of the Division Bench that the learned counsel for the petitioners submitted that the stipulation in S. 16 of the Act is not mandatory and can be waived in an appropriate case where the bona fides is spelt out.

8. Still later, the very same issue again came up for consideration before a learned single Judge of this Court in *Giby George and Another Vs. Marriage Officer (Principal District Registrar)*, . The marriage in that case was solemnised on 1.3.2007. Before the learned single Judge, the Marriage Officer raised the plea that the application for registration of the marriage under the Act can be filed only after cohabitation for a minimum period of 30 days after the marriage. The said plea was based on clause (f) of S. 15 of the Act Reliance was placed by the learned counsel for the petitioner therein on the decision of the Division Bench of this Court in *Y. John Lukose and Another Vs. The District Registrar*, . Relying on the decision of the Division Bench in *John Lukose v. District Registrar* (supra), the learned single Judge in *Giby George v. Marriage Officer* (supra) directed the application for registration to be received and acted upon if it is otherwise in order and to register the marriage without waiting for the expiry of the period of 30 days. It was also observed that such registration shall be published in the notice board and shall be liable to cancellation on any just and legal objection in accordance with law, after hearing the petitioners.

9. The very same issue again came up for consideration in a batch of Writ Petitions which were referred to a Division Bench of this Court. After a survey of the case law on the point and an analysis of the provisions in the Act, K.S. Radhakrishnan, J. (as his Lordship then was) speaking for the Bench in *Deepak Krishna and Another Vs. District Registrar and Others*, held as follows:

"18. S. 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 S. 16 is to ascertain whether the parties have complied with the conditions laid down in S. 15 of the Act. If the conditions mentioned therein especially (a) to (e) of S. 15 are not fulfilled, the registration of marriage under the Act and the deemed solemnization of marriage under S. 18 of the Act will have no legal effect as per S. 24(2) of the Act. Consequence of non-compliance under Ss. 15, 16, Rules 6 and 7 is provided in the Act itself. In our view the time clause of thirty days prescribed under 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 propose 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 under S. 16 is a mandatory clause, which is not liable to be waived."

(emphasis supplied)

10. The Division Bench thereafter proceeded to consider whether on a plea of hardship or inconvenience this Court can interpret a statutory provision in a manner inconsistent with its express terms. The Division Bench held that when the meaning of the statute is clear and explicit, if any hardship or inconvenience is caused, it is for the Parliament to take appropriate steps to amend the law and not for this Court to legislate under the guise of interpretation. The Division Bench thereafter proceeded to consider the correctness of the earlier decisions and held that John Roji Vs. Marriage Officer, and Giby George and Another Vs. Marriage Officer (Principal District Registrar), were not correctly decided and overruled the said decisions to the extent it was held that the Marriage Officer need not wait for 30 days from the date of the application to register the marriage under S. 15 of the Act. The Division Bench concurred with the judgment in W.A. No. 675 of 2004, which arose from W.P.(C) No. 10189 of 2004. The Division Bench also held that the principles laid down by the Division Bench in John Lukose v. District Registrar (supra) will be confined to the facts and circumstances of that case.

11. In the light of the authoritative pronouncements of the Division Bench of this Court in Deepak Krishna v. District Registrar (2007(3) KLT 570) and in W.A. No. 675 of 2004, I am of the opinion that the petitioners cannot seek or be granted a writ in the nature of mandamus commanding the respondent to register their marriage without waiting for the notice period of 30 days to expire. As observed by the Division Bench of this Court in Deepak Krishna v. District Registrar (supra) a notice period is stipulated in S. 16 of the Act so as to enable the public to respond and for the purpose of ascertaining whether the conditions stipulated in clauses (a) to (e) of S. 15 of the Act have been complied with. As noticed by the Division Bench in Deepak Krishna v. District Registrar (supra), in John Lukose v. District Registrar (supra) the marriage was solemnised 13 years before the application for registration was made and two children had been born in that wedlock. Having regard to the principles laid down by the Division Bench of this Court in Deepak Krishna v. District Registrar (supra), I find no grounds to grant the relief prayed for by the petitioners. There is also yet another reason why the Writ Petition must fail. ExtP5 is really not an application under S. 15 of the Act. It is an application under S. 5 of the Special Marriage Act, 1954. Even going by the principles laid down by the Division Bench in John Lukose v. District Registrar (supra), the notice period in respect of an application for registration of the marriage under S. 5 of the Act cannot be waived. Therefore for that reason also, the relief prayed for by the petitioners cannot be granted.

I accordingly hold that there is no merit in the Writ Petition. The Writ Petition fails and is dismissed in limine.