

(2013) 10 MP CK 0011
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 268 of 2013

The Madhya Bharat Arya Pratinidhi Sabha	APPELLANT
Vs	
Ashish Agrawal and Others	RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2014) 1 MPHT 419 : (2014) 2 MPLJ 334

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Harish Dixit, for the Appellant; B.S. Bhadoriya, Advocate for the Respondent No. 1, Mr. Raghvendra Dixit, Govt. Advocate for the Respondent Nos. 2 to 4 and Mr. Sushil Chaturvedi, Advocate for the Respondent Nos. 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

1. Heard. This writ appeal has been filed against the order dated 13-5-2013 passed in W.P. No. 3110/2013. By the aforesaid order, the learned Single Judge has issued following directions in regard to performing marriage by Arya Samaj Mandir:--

(i) Before performing any marriage, Arya Samaj Mandir shall take an application in writing from the girl and also from the boy, who wants to perform the marriage.

(ii) After receipt of application, Arya Samaj Mandir shall give a date to both the parties to remain present for performance of marriage at least after a week.

(iii) Immediately after receipt of application from the parties who intend to perform their marriage, Arya Samaj Mandir shall issue registered intimation to the father and mother of both the parties, wherein management of Arya Samaj shall inform the date and time on which the marriage will be performed.

(iv) Arya Samaj Mandir shall also intimate about the date and time of the

marriage to the concerned police station, where the parties reside by registered post and also to the concerned Collector.

(v) While performing the marriage, the management of Arya Samaj Mandir shall direct both the parties to remain present for performance of marriage with their friends and relatives, which shall not be less than five in number from each of the side.

(vi) Copy of the order be sent to Arya Samaj Mandir, Gola Ka Mandir, Morar, Gwalior and also Kila Gate, Gwalior through concerned Police Station under an acknowledgment.

2. It is submitted by learned Counsel for the appellant that the aforesaid directions are contrary to the provisions of Hindu Marriage Act, 1955 (for brevity, "the Act"). Arya Samaj was not a party in the writ petition before the Court and directions have been issued by the Court against Arya Samaj.

3. We have perused the record. It is an admitted fact that Arya Samaj was not made as a party before the Writ Court.

4. Section 2(a) of the Act prescribes that the Act shall be applicable to a Hindu by religion including Arya Samaj and other sects. Section 5 of the Act, which prescribes conditions for a Hindu Marriage reads thus:--

Conditions for a Hindu marriage.--A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely:--

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party--

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) 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

(c) has been subject to recurrent attacks of insanity;

(iii) the bridegroom has completed the age of twenty one years and the bride, the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.

5. Section 7 of the Act further prescribes ceremonies for a Hindu marriage, which reads thus:--

Ceremonies for a Hindu marriage.--(1) A Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the sapta-padi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

6. From perusal of the directions issued by the learned Single Judge, it is clear that the directions are contrary to the provisions of the Act. Apart from this, no notice was issued to Arya Samaj before passing the order nor it was a party before the Writ Court. Hence, the impugned order passed by the learned Single Judge is against the law. Consequently, the writ appeal is allowed. Impugned order passed by the learned Single Judge is hereby quashed.

No order as to costs.