

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 23615 of 2015 (B)

PETITIONER(S) :

- 1. VISHNU VIJAYAN, S/O.P.R.VIJAYAN,
VALLAVANCHIRAPUTHUPARAMBIL HOUSE,
PALLICKACHIRA.P.O., PAIPPAD, KOTTAYAM- 686 537.**
- 2. ANDREA MARIA MAGDALENA, WAPPERSDORF 5,
94569 STEPHANPOSCHING, GERMANY, PRESENTLY
RESIDING VALLAVANCHIRAPUTHUPARAMBIL HOUSE,
PALLICKACHIRA P.O., PAIPPAD, KOTTAYAM- 686 537.**

**BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

RESPONDENT(S) :

- 1. THE SUB REGISTRAR (MARRIAGE OFFICER),
THENGANA, PERUMPANACHI P.O., KOTTAYAM- 686 536.**
- 2. THE INSPECTOR GENERAL,
DEPARTMENT OF REGISTRATION, VANCHIYOOR P.O.,
THIRUVANANTHAPURAM- 695 035.**
- 3. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO
GOVERNMENT, REGISTRATION DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: A TRUE COPY OF THE RELEVANT PAGE OF THE PASSPORT OF THE 1ST PETITIONER.**
- P2: A TRUE COPY OF THE RELEVANT PAGE OF THE PASSPORT OF THE 2ND PETITIONER.**
- P3: A TRUE COPY OF THE COMMUNICATION NO.C.180/2015 DATED 30-07-2015 ISSUED BY THE 1ST RESPONDENT.**
- P4: A TRUE COPY OF THE BIRTH CERTIFICATE OF THE 2ND PETITIONER.**
- P5: A TRUE COPY OF THE REGISTRATION CERTIFICATE/PROOF OF RESIDENCE OF THE 2ND PETITIONER ISSUED BY THE LOCAL AUTHORITY OF STEPHANSPOSCHING ON 14-07-2015**
- P6: A TRUE COPY OF THE PRINT OUT SHOWING THE FLIGHT DETAILS OF THE 2ND PETITIONER.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

W.P.(C) No. 23615 of 2015 (B)

Dated this the 5th day of August, 2015

J U D G M E N T

The 1st petitioner, an Indian citizen, desires to enter into a marriage with the 2nd petitioner, who is a German National. The 1st petitioner, residing under the jurisdiction of the 1st respondent, made an application for contracting the said marriage under the Special Marriage Act, 1954. An objection was raised by the 1st respondent, allegedly on the ground that the marriage is intended to be entered into with a foreign citizen and, hence, the provisions of the Special Marriage Act cannot be invoked.

2. In fact, the said issue was already considered by this Court in **Rajeev v. State of Kerala [2001 (1) KLT 578]**, which relied on a decision of the High Court of Himachal Pradesh in **Marian Eva v. State of Himachal Pradesh [AIR 1993 Himachal Pradesh 7]**. The Court

categorically found that the Special Marriage Act does not contain any prohibition for solemnisation of the marriage, if one of the parties is a foreigner.

3. A reading of the provisions of the Special Marriage Act would also indicate that, Section 4 contemplates a marriage between “any two persons” could be solemnized under the Act; if the conditions specified therein are fulfilled.

4. It is also relevant that, by Circular No.R.R.3-25537/00 dated 8.8.2014, the Government had answered a clarification made by the Inspector General of Registration and specifically indicated after citing the aforesaid decisions that the word “person” used in Section 4 of the Special Marriage Act does not indicate either one of the parties or both the parties should be citizens of India.

5. In the present case, the petitioner, a citizen of India, is a resident within the jurisdiction of the 1st respondent. A German National, who he intends to marry,

is not having permanent residence in India and even if a Marriage Officer is appointed by the Government of India in its Embassy at Germany, there would be no requirement of informing such Marriage Officer, since the intending bride-to-be is a German National. In such circumstance, the application of the petitioner shall be accepted and notice shall be given by the 1st respondent as required under the Act and the petitioner permitted to contract the marriage as intended by him, which shall be solemnised under the Act.

The writ petition is allowed.

Sd/-
K.VINOD CHANDRAN,
JUDGE