

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 23996 of 2015 (Y)

PETITIONER(S) :

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RESPONDENT(S) :

- 1. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY
TO GOVERNMENT, DEPARTMENT OF REGISTRATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**
- 2. THE INSPECTOR GENERAL OF REGISTRATION,
VANCHIYUR, THIRUVANANTHAPURAM- 695 035.**
- 3. THE SUB REGISTRAR,
REGISTRATION DEPARTMENT, OFFICE OF THE SUB REGISTRAR,
ETTUMANOOR, KOTTAYAM.**

BY SR.GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1 : TRUE COPY OF THE PASSPORT OF THE PETITIONER.**
- P2 : TRUE COPY OF THE PASSPORT OF JOHN'S THOMAS.**
- P3 : TRUE COPY OF THE U.S.PASSPORT OF JOHN'S THOMAS.**
- P4 : TRUE COPY OF THE CERTIFICATE ISSUED BY THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA WASHINGTON DC DATED 23-07-2015.**
- P5 : TRUE COPY OF THE NOTICE U/S 5 OF THE SPECIAL MARRIAGE ACT 1954**
- P6 : TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD DATED 23-07-2015 OF EXT P5 NOTICE RECEIVED BY 3RD RESPONDENT.**
- P7 : TRUE COPY OF THE ACKNOWLEDGMENT CARD SHOWING REMITTANCE OF FEES.**
- P8 : TRUE COPY OF THE CIRCULAR DATED 08-08-2014 ISSUED BY 2ND RESPONDENT.**
- P9 : TRUE COPY OF THE JUDGMENT DATED 14-07-2015 IN W.P.(C).NO.21197/2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

W.P(C). No.23996 of 2015

Dated this the 07th day of August, 2015.

JUDGMENT

The petitioner, an Indian citizen, desires to enter into a marriage with one Johns Thomas, who is an American Citizen of Indian origin. The petitioner made an application for contracting the said marriage under Section 5 of the Special Marriage Act, 1954. An objection was raised by the 3rd 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. Another learned Single Judge of this Court also found to the same effect in Ext.P9 judgment.

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. To satisfy the officer of the conditions stated therein, the intending bridegroom has also given Ext.P4 Certificate dated 23.07.2015 issued by the Superior Court of the District of Columbia, Washington DC, wherein it is stated that after made an inclusive search of office records from October 2, 2006 to July 23, 2015, no marriage license or marriage certificate has been found.

4. It is also relevant that, by Ext.P8 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 is a citizen of India. The American citizen, who the petitioner 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 Washington, there would be no requirement of informing such Marriage Officer, since the intending bridegroom is an American citizen. In such circumstance, the application of the petitioner shall be accepted and the petitioner is permitted to contract the marriage as intended by her, which shall be solemnised under the Act.

The writ petition is allowed.

Sd/-

**K.VINOD CHANDRAN,
JUDGE**

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