

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE M.M.SUNDRESH

W.P.No.27552 of 2011
and M.P.No.1 of 2011

R.Syed Anver Basha

... Petitioner

-vs-

1. The Secretary to Government,
Commercial Tax & Registration,
Government of Tamil Nadu,
Fort St. George, Chennai.
2. The Secretary,
Law Department,
Government of Tamil Nadu,
Fort St. George, Chennai.
3. The Inspector General of Registration,
Santhome High Road, Mylapore,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration declaring Section 2 (e) and Rule 5(4) of 'The Tamil Nadu Registration of Marriages Act, 2009 (Act 21 of 2009)' as void ab-initio innocuous and absurd and consequently, delete the same from the statute forthwith.

For Petitioner : Mr.M.J.Jaseem Mohamed

For Respondents : Mr.S.T.S.Moorthy,
Govt. Pleader

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The challenge laid in this Public Interest Litigation is to Sections 2(e) and 5 (1) of The Tamil Nadu Registration of Marriages

Act, 2009 (hereinafter referred to as 'the said Act') (the provisions have been wrongly mentioned in the petition).

2.The submission of the learned counsel for the petitioner qua the constitutional validity of Section 2(e) is that while this legislation is a beneficial piece of legislation emanating from the judgment of the Hon'ble Supreme Court in Seema vs. Ashwani Kumar, AIR 2006 SC 1158, as observed in the statement of objects and reasons itself, the definition clause defining 'priest' reads as under:

'2.Definitions. - In this Act, unless the context otherwise requires, -

...
(e) 'priest' means any person who performs a marriage or any person present in the marriage referred to in section 7-A of the Hindu Marriage Act, 1955 (Central Act XXV of 1955).'

3.The submission, thus, is that no provision has been made in case of a Muslim or a Christian.

4.In the counter-affidavit, it is stated that the definition is wide enough and without any limitation to any specific religion.

5.In our view, the question is not whether the provision is wide enough or not, as per the counter-affidavit, but as to how the provision reads. The definition of a 'priest' specifically refers to the provision of Section 7-A of the Hindu Marriage Act, 1955. We are, thus, surprised to note the stand in the counter-affidavit, more so, when Section 20 of the said Act provided for removal of difficulty within the first two years of the Act being brought into force and Section 20 reads as under:

'20.Power to remove difficulties. - If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order publish in the Tamil Nadu Government Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to them to be necessary or expedient for removing the difficulties:

Provided that no order shall be made after the expiry of a period of two years from the date of commencement of this Act.'

6.Thus, if what is stated in the counter-affidavit is to be given intent, the amendment to Section 2(e) of the said Act becomes mandatory.

7.Learned Government Pleader, faced with the aforesaid position, requests for some time for purposes of amending Section 2 (e) of the

said Act suitably.

8.As far as Section 5(1) of the said Act is concerned, it prescribes a form to be filled in, in duplicate, to be handed over to the Registrar of the area, where the marriage is performed, within 90 days from the date of marriage.

9.In respect of the aforesaid, the petitioner seeks to contend that in the case of one Mushtaq Khan Lodi, the provision was erroneously construed and the second appeal preferred under Section 9 of the said Act against the order of refusal dated 30.04.2011 of the District Registrar, Krishnagiri, is still pending consideration before the third respondent.

10.In our view, it is not a matter of constitutional challenge, but we do consider it appropriate to direct the third respondent to dispose of the second appeal within one month of receipt of this order, if not already disposed of.

11.We may also note the averments in para 7 of the counter-affidavit that as per G.O. (Ms.) No.758, Home (Courts IV) Department, dated 26.08.2010, necessary provisions have been made under Section 5 (1) for people of different faith. The relevant portion reads as under:

7. The Government have issued G.O. (Ms) No.758, Home (Courts IV) Department, dated 26.8.2010, wherein Amendment to Sec 5(1) of Tamil Nadu Registration of Marriages Act, 2009, has been implemented. According to the above amendment, people of Islamic faith (Muslims) have been given separate provision to submit their Memorandum for Registration of Marriage in Form IA. In the said form in Column 8, where the following details can also be provided:

(i) Name and address of the Khazi / Imam who conducted the marriage (ii) Date and Time of the Marriage (iii) Full address of the Venue of Marriage (iv) Signature of the Khazi / Imam, has been mentioned.

Hence, the averment made by the petitioner is unsustainable.''

12.The aforesaid also seems to give credence to the thought process of the State Government that it wants to cover persons of all religions, as is the intent of the Act, but then a G.O. cannot change the definition clause, which would require amendment.

13.Writ petition, accordingly, stands disposed of. No costs. Consequently, M.P.No.1 of 2011 stands closed.

14.The aspect of the amendment to Section 2(e) of the said Act be placed before this Court by filing a status report within three months, within which time the learned Government Pleader expects the necessary change in the statute to be made.

15.Post for filing of status report on 24.07.2015.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

1. The Secretary to Government,
Commercial Tax & Registration,
Government of Tamil Nadu,
Fort St. George, Chennai.
2. The Secretary,
Law Department,
Government of Tamil Nadu,
Fort St. George, Chennai.
3. The Inspector General of Registration,
Santhome High Road, Mylapore,
Chennai.
4. The Section Officer,
Writ Section,
Writ Posting,
High Court, Madras.

(For Posting the matter on 24/7/15)

+1cc to Mr.M.J.Jaseem Mohamed, Advocate, S.R.No.17473
+1cc to the Government Pleader, S.R.No.17440

W.P.No.27552 of 2011

BKY(CO)
CA(01/04/2015)