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W.P.(MD)NO.13304 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2022

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.13304 of 2022

S.Sarath Kumar

... Petitioner

v.

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Sub Registrar,
O/o. The Sub Registrar,
Thiruchuzhi,
Virudhunagar District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the 2nd respondent to register the petitioner's marriage held between the petitioner and his wife Lediya with the consent of both the families at my residence on 10.06.2022, based on the application dated 15.06.2022.

For Petitioner

: Mr.R.Murugan

For Respondent No.1

: Mr.K.Balasubramani,
Special Government Pleader.

For Respondent No.2

: Mr.K.S.Selva Ganesan,
Additional Government Pleader.

**ORDER**

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Is age a mere number?. Not always. That is what the writ petitioner learnt to his utter dismay.

2.The petitioner belongs to a Scheduled Caste. He fell in love with Ms.Lediya who professes Christianity. Their relationship was approved by both the families. They purportedly got married on 10.06.2022 in the presence of the local panchayat president and a political functionary. The couple thereafter submitted a joint application before the second respondent on 17.06.2022. What was submitted was only a notice under Section 5 of The Special Marriage Act, 1954. The couple were under the fond hope that they will be issued with a marriage certificate. Though the parents of the couple had given green signal, the registering authority waved the red flag. He told them that registration was not possible because Ms.Lediya was yet to turn 21. That led to the filing of this writ petition.

3.The learned counsel appearing for the writ petitioner submitted that the second respondent failed to take



note of Section 4 (c) of the Act, as per which it would be enough if the female had completed the age of 18 years. He called upon this Court to issue a direction for registering the marriage.

4.The moot question is whether such a direction can be issued. The Act makes a distinction regarding the modes of solemnizing a marriage. Marriage can be solemnized under the Act itself or it can be celebrated in other forms. Chapter II of the Act deals with solemnization of special marriages. Section 4 sets out the conditions therefor. Section 5 stipulates that the parties to the marriage should give notice thereof in the prescribed form. The marriage officer shall enter the notices given thereunder in the Marriage Notice Book and it shall be open for inspection. That is how the news about the proposed marriage between 70 year old Periyar E.V.Ramasamy and 32 year old Maniyammai, became known because someone came across the notice of intended marriage given by them. French President Emmanuel Macron's wife is 25 years older to him. For such illustrious couples, age is a mere number.



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5. Let us come back to the statutory scheme. Any person can lodge objection to the marriage within thirty days if the conditions specified in Section 4 have been contravened. Section 8 to 10 deal with the procedure on receipt of objection. Section 12 and 13 are as follows :

“12. Place and form of solemnization.

(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,-- "I, (A), take the (B), to be my lawful wife (or husband)".

“13. Certificate of marriage.-(1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form



specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses. (2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with."

If the marriage has been solemnized under Chapter II of the Act, then, the age requirement is completion of 21 years for the male and 18 for female.

Section 15 of the Act is as follows :

"15.Registration of marriages celebrated in other forms.-Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (3 of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:-



(a) a ceremony of marriage has been performed between the parties and they have .been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degrees of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.”



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6. Section 15 expressly excludes marriages solemnized under the Act and it deals only with marriages celebrated in other forms. As already pointed out, the petitioner is a Hindu while Lediya is a Christian. They underwent what is apparently a self respect marriage. But, Section 7-A of the Hindu Marriage Act dealing with such marriages can have no application. The said provision was introduced in the year 1967 to confer recognition for marriages held without religious ceremonies. In other words, a sacramental marriage performed as per ceremonies as well as a marriage celebrated in terms of Section 7-A are both valid. However, Suyamariyathai and Seerthiruththa marriages (reformist/self respect marriages) can be performed only between two Hindus. The reformist zeal of the legislature stopped with tinkering the institution of Hindu marriage. It did not venture beyond. Therefore, what was performed on 10.06.2022 between the petitioner and Ms. Lediya cannot be considered as one solemnized under the Hindu Marriage Act, 1955.



7.Let me turn my attention to The Indian Christian Marriage Act, 1872. Interestingly, this Act does not stipulate that both the parties must be Christians. Section 4 of the said Act indicates that it is sufficient if either the bride or the bridegroom is Christian. However, the marriage must be solemnized by following the procedure set out therein. For instance, Section 10 of the Act states that every marriage shall be solemnized between 6.00 a.m. and 7.00 p.m. Section 11 of the Act stipulates that the venue of the marriage must be invariably a church. It is not the case of the petitioner that his marriage was solemnized under the Indian Christian Marriage Act, 1872.

8.The petitioner can hope to succeed only if he can show that his marriage was solemnized under the Special Marriage Act. Even according to the petitioner, the marriage was performed on 10.06.2022. Only thereafter, notice was given under Section 5 of the Act. Giving notice under Section 5 is the first step. The petitioner and his wife have been quite fast so far. But law does not always believe in speed. Things have to move only in a sequential order. The couple in



question have put the cart before the horse. The parties after performing their so-called marriage had given notice under Section 5 of the Act. The language of Section 5 of the Act is clear. The petitioner did not marry Ms.Lediya under The Special Marriage Act, 1954. He cannot avail the benefit set out in Section 4 of the Act. The second respondent rightly declined the petitioner's request. No mandamus can be issued contrary to law. The writ petition stands dismissed.

9.But my heart goes out to the young couple. Marriage is a fundamental institution. Sage Thiruvalluvar has devoted an entire Chapter on marital life in his immortal Thirukkural. Socrates would call marriage a win-win proposition for men. If the wife is good, the male is happy. If she turns out to be misfit, he can become a philosopher. My role now metamorphoses from that of an adjudicator to an adviser. The petitioner and Ms.Lediya did not undergo any marriage in the legal sense of the term on 10.06.2022. Nothing stops them from solemnizing their marriage under the Special Marriage Act. The petitioner has given notice under Section 5 of the Act only on 17.06.2022. The said notice



will be valid for a period of three months. He can very well follow the procedure set out in the said Act. In that event, the second respondent cannot refuse to issue marriage certificate on the ground that Ms.Lediya has not yet turned 21. No costs.

30.06.2022

Index : Yes / No
Internet : Yes/ No
skm

To:

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Virudhunagar District,
Virudhunagar.
2. The Sub Registrar,
O/o. The Sub Registrar,
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G.R.SWAMINATHAN, J.

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