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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1479/2023

RUMA DUTTA ALIAS RUMA ROY
VS
THE STATE OF WEST BENGAL AND ANR

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 9th August, 2023.

Appearance :

*Mr. Sayak Chakraborti, Adv.
Mr. Wrickbrata Roy, Adv.
..for the petitioner*

The Court : Despite service, none appears for the respondents.

The affidavit of service filed today be kept with the record.

Learned counsel for the petitioner submits that the petitioner, who is an Indian citizen, seeks to marry a person who is a citizen of a foreign country under the Special Marriage Act, 1954. However, while trying to fill up the online application for registration /solemnization of the marriage, under the head 'Nationality', the petitioner found only two options, 'Indian' and 'NRI'.

It is submitted that since the intended spouse of the petitioner does not fall within either of the categories, a third column ought to have been introduced for foreign nationals.

Learned counsel places reliance of the language of the Section 4 of the Special Marriage Act, 1954, which contemplates that “any two persons” may contract a marriage under the said Act.

Learned counsel also places reliance on a decision of a learned Single Judge of the Delhi High Court, reported at **2023 SCC OnLine Del 187 [Arushi Mehra and Another versus Govt. (NCT of Delhi) and Another]**, where the learned Single Judge held that marriage can be solemnized between two parties under the 1954 Act even if the said persons were not Indian citizens.

Learned counsel for the petitioner, in elaboration of his argument, to stress the contradistinction between the Special Marriage Act and the Foreign Marriage Act, 1959, places Section 4 of the latter statute, which provides for marriage being contracted between the parties in a foreign country, where at least one of the parties is a citizen of India.

A comparison of the two statutes, that is, the Special Marriage Act, 1954 and the Foreign Marriage Act, 1959, as rightly pointed out by learned counsel for the petitioner, indicates that the only relevant statute available, when an Indian citizen seeks to enter into a nuptial bond with a foreign national, is the Special Marriage Act.

In the event the marriage is held within the territorial jurisdiction of India, the Foreign Marriage Act does not confer any jurisdiction, since the same only pertains to such marriage when it is contracted in a foreign country.

Hence, by specific exclusion, the Special Marriage Act is the only remaining statute in India which provides for a marriage between an Indian national and Foreign national, if held within the confines of India.

That apart, as held in the judgment of the Delhi High Court cited by the petitioner, the expression “between any two persons” under Section 4 of the 1954 Act sheds sufficient light on the fact that there is no other fetter, than those stipulated in the subsequent part of Section 4 of the said Act, for marriage to be contracted between an Indian national and a Foreign national under the said Act.

For the sake of comprehensiveness, we are required to look into the Section 1 of the 1954 Act as well. The same stipulates that the Act extends to the whole of India except the State of Jammu and Kashmir and applies also to citizens of India domiciled in the territories to which the Act extends who are in the State of Jammu and Kashmir.

However, nothing in the said provision puts a fetter on a marriage of the type as in the present case, to be contracted under the said Act. The only condition is that the marriage is required to be held in India, since the Act operates to the whole of India and not abroad.

Hence, the petitioner is entitled to the relief as prayed for.

Accordingly, WPO/1479/2023 is disposed of by directing the respondents to ensure that the petitioner’s application for solemnization of marriage with a foreign national is accepted, if necessary manually, in order to enable the petitioner to accommodate the foreign nationality of her intended spouse.

Since a foreign national does not have an Aadhar Card or Aadhar number, which is required to be given in the present format of the application, the respondent no.2 shall also permit the petitioner to file the application for

marriage registration / solemnization, without furnishing any Aadhar number of her intended spouse. However, while receiving such application, the respondent no.2 may insist upon production of any commonly recognized identification document of the intended spouse, if necessary issued by the country from where the petitioner's spouse hails, for the purpose of processing the application.

The respondent no.1 is also directed to take immediate steps to rectify such defects in the online form for registration / solemnization of marriage, to the effect that under the head 'Nationality', apart from the options 'Indian' and 'NRI', a third option of 'foreign national' is also incorporated. That apart, other options of identity/address proof than Aadhar Card has also to be provided for as an option in the online application form, at least for foreign nationals.

It is expected that the respondent no.1 shall take immediate steps in that regard and carry out necessary rectification as per the above direction at the earliest, preferably within a month from the date of communication of this order to the said respondents.

The parties as well as all concerned are to act on a server copy of this order, without insisting upon prior production of the certified copy for the purposes of compliance.

(SABYASACHI BHATTACHARYYA, J.)