

27th February,
2024
(AK)
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W.P.A 1329 of 2024

Chaitali Bhattacharyya
Vs.
The State of West Bengal and others

Mr. Sabyasachi Chatterjee
Mr. Sandipan Das
Mr. Badrul Karim
Mr. Kiron Sk.
Mr. Sarajit Roy
Ms. Indrni Roy

...for the petitioner.

Mr. Jyoti Prakash Chatterjee
Mr. Debansu Nandi

...for the State.

1. The petitioner is a Non-Official Marriage Registrar.
2. The present challenge has been preferred against a notice seeking clarification from the petitioner dated January 08, 2024.
3. In the said notice, it has been alleged that there were certain major corrections which were required by the petitioner in the marriage certificate issued by her, which were not to be treated as inadvertent errors.
4. It was further alleged that the petitioner is guilty *prima facie* of gross misconduct as per Rule 38(2)(l) of the West Bengal Special Marriage Rules, 2010.

5. It is argued that the Registrar General of Marriages has issued the said notice *mala fide*, to malign the petitioner.
6. A similar exercise occurred previously by the Registrar General of Marriages. On a previous occasion, despite the petitioner's period of suspension having expired, the petitioner's name was being shown at the concerned portal of the authorities as "fully suspended".
7. Hence, upon the petitioner moving court, by an order dated May 15, 2023 passed in WPA 2893 of 2023, a coordinate Bench of this court had directed appropriate corrections on the web portal to be effected within 48 hours from the date of the order so that the present petitioner can also resume her functions and duties as a Marriage Registrar.
8. Hence, it is argued that the Registrar General of Marriages is in the habit of crime to malign the petitioner and the impugned action should be set aside as *mala fide*.
9. In the said impugned notice, certain provisions of law have been relied on, which are also placed by learned counsel for the petitioner for advancing the proposition that none of the said provisions are germane in the present context or can qualify the petitioner's action as one of gross misconduct.

10. Learned counsel for the State submits that on the previous occasion of suspension, a similar mistake had been committed by the petitioner in leaving as many as four major errors in the marriage certificates issued by her.
11. Hence, the petitioner, it is alleged, is a repeat offender and the respondent authorities did not commit any error, either of law or fact, or any *mala fide* action in issuing the impugned notice dated January 08, 2024.
12. It is further argued that the petitioner, due to her repeated mistakes, already suffered the previous suspension which goes on to show the veracity of the allegations against her.
13. Taking first things first, it is to be looked into whether the relevant provisions mentioned in the notice are germane.
14. Insofar as Section 5 of the Special Marriage Act, 1954 is concerned, the same pertains to notice of intended marriages.
15. Section 13, which is another provision quoted in the impugned notice, speaks about certificate of marriage.
16. Sub-section (2) of Section 13 provides that when 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 the Special Marriage Act has been solemnized.

17. The other provisions are Rules 11(24) and 19, read with Rule 38(2)(l), of the West Bengal Special Marriage Rules, 2010.
18. Insofar as Rule 11(24) is concerned, the same provides that a Marriage Officer shall, before signing the Marriage Certificate, satisfy himself that the parties are marrying voluntarily and there is no element of force, coercion, fraud, manipulation etc.
19. On the other hand, Rule 19 stipulates the processing of notice filed under Section 5.
20. In Clause (1)(a) of Rule 19, it is provided that the Marriage Registrar shall satisfy himself that the notice is in conformity with the requirements of Sections 4, 5 and Rule 16 and shall ascertain the police station, block etc.
21. On a cursory reading, there is no direct infraction of the said provisions merely by committing an error of the nature as indicated in the impugned notice, nor is there any direct violation of Sections 5 or 13.
22. However, on a broad perspective, the said provisions are the guidelines which are provided for a marriage certificate being issued.
23. Importantly, Section 13(2) of the 1954 Act stipulates that a marriage certificate, once issued

and entered in the Marriage Certificate Book, attains a conclusive character regarding the marriage, thereby showing the extreme importance of such a certificate. Thus, while issuing the same, the concerned marriage officer has to be extremely careful.

24. Rule 38 under Chapter VIII of the 2010 Rules provides two kinds of misconducts, ordinary and gross.
25. The present allegation made against the petitioner is under Rule 38(2)(l) which provides for entering wrong or false or incomplete marriage solemnization or registration related particulars in the Marriage Certificate Book, which is deemed as gross misconduct under the said provision.
26. It is seen from the impugned notice dated January 08, 2024 that the petitioner herself sought for correction with regard to the father's name of the groom as well as the details of the bride, which include the name of the bride as well as her father's name and her Aadhaar card number.
27. It is to be noted that the Aadhaar card of the groom was also incorrectly mentioned in the marriage certificate-in-question, for which the petitioner has sought correction as well.
28. Seen in proper perspective, the fact that the petitioner was also previously suspended for similar

errors in recording the particulars in the marriage certificate/marriage certificate book, goes on to show that the petitioner might be labelled as a habitual offender on such count.

29. The very fact that the petitioner was previously suspended on similar grounds goes on to show not the *mala fides* of the respondents but that the petitioner has the propensity to commit similar mistakes repeatedly.
30. Seen in such context, it cannot be said that the authorities were in error in resorting to Rule 38(2)(l) of the 2010 Rules in issuing the impugned notice, since the said provision also includes entering wrong or incomplete registration related particulars in the marriage certificate book as a gross misconduct, inviting further penal action.
31. Moreover, the present challenge is against the impugned notice which is in the nature of a show-cause only and not any penal action.
32. Accordingly, such challenge is also premature.
33. At this juncture, learned counsel for the petitioner submits that the petitioner was given opportunity to give a reply and has given a reply and has been permitted to carry out some of the corrections.
34. However, even if the petitioner was permitted to carry out certain corrections, the same was to ensure that the parties to the marriage do not

suffer and does not, in any manner, alleviate or make light the offence, if any, committed by the petitioner.

35. As such, such permission being given *post facto* to the petitioner is not germane for the present consideration.
36. Thus, the present challenge to the notice dated January 08, 2024 cannot be sustained.
37. In any event, even if the necessary corrections sought by the petitioner are permitted to be carried out, the same does not in any manner affect the outcome of the impugned show-cause notice.
38. As such, it is expected that the respondent authorities shall permit the petitioner to carry out the remaining corrections to the concerned marriage certificate for the benefit of the parties to the marriage, of course, without prejudice to the right of the authorities to pursue the course of action as initiated by the impugned notice dated January 08, 2024.
39. Accordingly, WPA 1329 of 2024 is disposed of in the light of the above observations without interfering with the impugned notice dated January 08, 2024.
40. The respondent authorities will be at liberty to proceed pursuant to the said notice in accordance with law.

41. However, the merits of the allegations against the petitioner have not been gone into by this court and the respondents shall proceed further against the petitioner on the basis of the impugned notice with an open mind, independently and without being influenced unduly by any of the observations made above.

42. There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)