



IN THE HIGH COURT OF DELHI

WP(C) No. 748/2009

Decided On: 08.04.2009

Appellants: **Pranav Kumar Mishra and Ors.**

Vs.

Respondent: **Govt. of NCT. of Delhi and Ors.**

Hon'ble Judges/Coram:

S. Ravindra Bhat, J.

Counsels:

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Case Note:

Family - Notice of Intended Marriage - Applicability of Section 5 of the Special Marriages Act, 1954 - Petitioners challenged the alleged practice of posting the notice of intended marriage at the residential addresses of both parties to the marriage - Petitioner contended that Section 5 of the Special Marriages Act, 1954 did not require pasting of notice for verification of address and it amounted to breach of privacy - Held, It is clear from textual reading of the relevant provisions of the Act and the information procured from the website of the state Govt. that no requirement of posting of notice to applicants' addresses or service through the SHO, or visit by him is prescribed in either the Act or the website - Petitioner's concerns and apprehensions are justified and in terms of Sections 4 and 5, it amounts to breach of the right to privacy - Hence, All Marriage Officers are hereby directed to follow the above procedures and not dispatch notices to the residence of the applicants -Writ Petition allowed.

JUDGMENT



S. Ravindra Bhat, J.

1. The petitioners, by way of this writ petition, challenge the alleged practice of posting the notice of intended marriage under the Special Marriages Act, 1954 (hereafter the Act) at the residential addresses of both parties to the marriage as also through the Station House officer (S.H.O.) of the police station of concerned jurisdiction for the purpose of verification of address.

2. As per the petition the first and the second petitioner are citizens of India and permanent residents of Delhi both being of marriageable age as required under the provisions of the Act. They intend to be married under the provisions of the said Act. For this purpose they approached office of the Registrar of Marriages at Deputy Commissioner North, 5 Shamnath Marg, Delhi and obtained the necessary forms. They state that on further inquiry they were informed of the procedure whereby a copy of the "Notice of Intended Marriage" (as required under Section 5 of the Act) would be displayed on the Notice Board of the Registrar's office for information to the public at large and for inviting objections. They were also told that another copy of the "Notice of Intended Marriage" would be sent at the respective addresses of the parties and a notice may also be sent through the S.H.O. of the police station of the concerned jurisdiction for the purpose of verification of the residential address.

3. It is further stated that for the purpose of confirming the above stated procedure the petitioners made an application under the Right to Information Act but they did not receive a satisfactory response. The petitioners challenge the procedure adopted as being arbitrary and illegal and state the same is not line with the provisions of the Special Marriage Act, 1954 to the extent it provides for posting of the notice at the addresses of the parties and verification of the address by the S.H.O. They do not wish the said notice to be sent to their residences.

4. The relevant provisions of the Act with respect to solemnization of special marriages and requirement of notice are as under:

4. Conditions relating to solemnization of special marriages. - Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:

(a) neither party has a spouse living;

(b) neither party is an idiot or a lunatic;

(c) the male has completed the age of twenty-one years and the female the age of eighteen years;

(d) the parties are not with the degree of prohibited relationship; and

(e) where the marriage is solemnized outside the territories to which this Act extends, both parties are citizens of India domiciled in the said territories.

5. Notice of intended marriage. - When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.



6. Marriage Notice Book and publication. - (1) The marriage Officer shall keep all notices given under Section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.

(2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.

(3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under Section 5, transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.

5. The criteria as stated on the website of Delhi Government (www.delhigovt.nic.in) under the FAQ Section regarding the 'registration of marriages which have already been solemnized' is as under:

Q. What will be the criteria used while deciding my case-

A) Hindu Marriage Act

Verification of all the documents is carried out on the date of application and a day is fixed and communicated to the parties for registration. On the said day, both parties, alongwith a Gazetted Officer who attended their marriage, need to be present before the SDM. The Certificate is issued on the same day.

B) Special Marriage Act

Both parties are required to be present after submission of documents for issuance of public notice inviting objections. One copy of notice is pasted on the notice board of the office and copy of the notice is sent by registered post to both parties as per address given by them. Registration is done 30 days after the date of notice after deciding any objection that may have been received during that period by the SDM. Both parties alongwith three witnesses are required to be present on the date of registration.

6. The criterion for 'solemnization of marriage under Special marriage Act' revealed is follows:

Q. What will be the criteria used while deciding my case-

For solemnization of marriage, presence of both parties is required after submission of documents of issuance of notice of intended marriage. A copy of the notice is pasted on the office notice board by the SDM. Any person may within 30 days of issue of notice, file objection to the intended marriages. In such a case, the SDM shall not solemnise the marriage until he has decided the objection, within 30 days of its receipt. If the SDM refuses to solemnise the marriage, any of the parties may file an appeal within 30 days to the District Court. In case no objection is received, the SDM solemnises the marriage after 30 days of the notice. Both parties alongwith 3 witnesses are required to be present on the date of solemnisation of marriage. It is advisable to submit names of witnesses atleast one day in advance.

7. The petitioners contend that the authorities are following the criterion prescribed for the purpose of 'registration of marriages which have already been solemnized' rather than the one

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enacted for 'solemnization of marriage under Special Marriage Act', which clearly does not provide for sending notices to the respective residential addresses of the parties to the intended marriage. It merely requires pasting of the notice at the office notice board by the S.D.M.

8. It becomes clear on a textual reading of the relevant provisions of the Act and the information procured from the website of the Govt. of Delhi that no requirement of posting of notice to applicants' addresses or service through the SHO, or visit by him is prescribed in either the Act or the website. The Petitioner's concerns and apprehensions are justified. Absent any legal compulsion - as is the position -for sending notices to residential addresses in case of solemnization of the marriage, in terms of Sections 4 and 5, their dispatch can well amount to breach of the right to privacy, which every individual is entitled to Ref Govind v. State of MP MANU/SC/0119/1975 : (1975) 2 SCC 148, R. Rajgopal v. State of T.N. MANU/SC/0056/1995 : (1994) 6 SCC 632, District Registrar and Collector v. Canara Bank MANU/SC/0935/2004 : (2005) 1 SCC 496.

9. It is to be kept in mind the that the Special Marriage Act was enacted to enable a special form of marriage for any Indian national, professing different faiths, or desiring a civil form of marriage. The unwarranted disclosure of matrimonial plans by two adults entitled to solemnize it may, in certain situations, jeopardize the marriage itself. In certain instances, it may even endanger the life or limb of one at the other party due to parental interference.

10. In such circumstances if such a procedure is being adopted by the authorities, it is completely whimsical and without authority of law. The Writ Petition, therefore, deserves to succeed; the respondents are hereby directed to consider and process the petitioners' request for solemnization of marriage under the Special Marriage Act, 1954, without sending any notices to their residences. It is, however, open to the concerned Marriage Officer to display the notice on the office notice board in accordance with law. All Marriage Officers are hereby directed to follow the above procedures and not despatch notices to the residence of the applicants, who seeks solemnization of their marriage under Chapter II of the Act.

The writ Petition is allowed in the above terms.

Order Dasti.

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