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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 12th January, 2023

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W.P.(C) 15117/2022

ARUSHI MEHRA & ANR. Petitioners
Through: Mr. Rishabh Kapur, Advocate.

versus

GOVT. OF NCT OF DELHI & ANR. Respondents
Through: Ms. Nidhi Raman CGSC with Ms.
Zubin Singh, Advocate for UOI.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This present petition has been filed by the Petitioners seeking a direction to the Respondent No. 2- Sub-Divisional Magistrate (Defence Colony) to permit the Petitioners to physically submit the required documents and complete requisite formalities for solemnising their marriage as also registering the same under the provisions of the Special Marriage Act, 1954 (*hereinafter 'the Act'*).
3. The Petitioner no. 1 - Hindu by religion, is a Canadian citizen. She, however, holds an Overseas Citizen of India (OCI) card. Petitioner No. 2, a Christian by religion, is an American citizen. They both reside in Delhi and are working in Delhi.
4. It is the case of the Petitioners that they intend to solemnize their marriage and register the same under the Special Marriage Act, 1954. However, the Petitioners have been constrained to file this petition because

the website of the GNCTD which facilitates the registration and solemnization of marriages i.e., www.edistrict.delhigovt.nic.in does not permit for an online form to be submitted if one of the parties is not an Indian citizen. The message pops up to the following effect at least one party should be an Indian.

“at least one party should be Indian”

5. The Petitioners then made an attempt to visit the office of the Respondent No. 2 SDM Defence Colony in order to submit the requisite forms physically. However, the SDM refused to accept the application. Thereafter, a representation dated 12th October, 2022 was also made by the Petitioners which has not been replied to. Hence the prayer in this petition is for permitting the Petitioners to physically submit their forms, documents and fee and allow the Petitioners to solemnize their marriage and registered the same in accordance with the provision of the Special Marriage Act, 1953.

6. Ld. Counsel for the Petitioner submits that under the Act, it is not necessary that the parties solemnizing the marriage ought to be citizens. Ld. counsel relies upon an order dated 11th August, 2021 passed by this Court in *Writ Petition (Civil) 7951/2021* titled ‘*Aryan Arianfar & Anr. v. State Govt. Of NCT of Delhi & Ors.*’. The said case also related to two foreign nationals where the Court observed as under: -

“1. The present petition has been preferred by two foreign nationals

who claim that their marriage was solemnised at New Delhi on 05.04.2021. The grievance of the petitioners is that despite their repeated requests to respondent no. 2, they have not even been granted an appointment

with respondent no.2 for registration of their marriage under the Special Marriage Act.

2. On the last date, learned counsel for respondents no. 1 & 2 were granted time to obtain instructions. Today, Mr. Aggarwal submits that the respondents are in the process of making relevant changes in its e-portal to ensure that such grievances are not raised by other similarly placed persons in the future. He, however, submits that the said process is likely to take some time and therefore, the petitioners cannot be granted an online appointment till the revised guidelines are issued and relevant changes made on the e-portal.

3. Learned counsel for the petitioners submits that the petitioners, who have been staying in India on an extended visa, are desirous of returning to their country and therefore, pray that the respondent no.2 be directed to permit them to physically visit the office of the respondents for registration of their marriage.

4. Learned counsel for the respondent nos.1&2 has no objection to the said request.

5. In the light of the aforesaid facts, the respondent no.2 is directed to communicate a date for a physical appointment to the petitioners within the next three days, in order to facilitate the registration of their marriage. The said communication be also sent to the learned counsel for the petitioner. It is expected that in the meanwhile, the respondents will take expeditious steps for amending the relevant guidelines and make the necessary changes in the e-portal to enable foreign nationals, whose marriages are solemnized in Delhi, to apply on the e-portal for registration of their marriage.

6. In the light of the aforesaid stand taken by the respondents, the requirement of filing counter affidavit(s) is waived for the present. In case the need so arises, appropriate directions in this regard will be passed at a later stage.”

7. Ld. Counsel for the Petitioner also submits that directions were also issued way back on 14th January, 2019 in *Bhumika Mohan Jaisinghani & Am v Registrar of Marriage & Ors, 2019 SCC Online Del 6538* wherein the ld. Single Judge had directed as under: -

“16. The respondents are further directed to take the necessary steps for modification of the software being used for registration of marriages and issuance of certificates. The details of the marriage between the petitioners shall be entered into by respondent no. 1 as and when the software is modified without the presence of the petitioners or the witnesses.”

8. On a query from the Court, ld. CGSC for the Union of India, Ms. Nidhi Raman submits that she is not aware of the status of the portal which had to be modified in terms of the order passed and extracted above. She submits that the said file for incorporating the said changes as directed by the Court according to her, is pending before the concerned District Magistrate.

9. A perusal of the decisions extracted above shows that the order passed by the ld. Single Judge makes it clear that the Respondents have to take expeditious steps for amendment of the guidelines and make the required changes to the e-portal to enable foreign nationals whose marriages are to be solemnized and registered in Delhi to apply online for the same. The relevant provision in the Act which enables the same is Section 4 of the Act. Section 4 of the Act is extracted 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--

(i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(iii) has been subject to recurrent attacks of insanity

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

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

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and

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

Explanation.-- In this section, "custom", in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied--

(i) that such rule has been continuously and uniformly observed for a long time among those members;

(ii) that such rule is certain and not unreasonable or opposed to public policy; and
 (iii) that such rule, if applicable only to a family, has not been discontinued by the family.”

10. A perusal of Section 4 of the Special Marriage Act, 1953 leaves no doubt that any two persons can seek solemnization of their marriage so long as conditions therein are fulfilled. Sub-Sections (a), (b), (c) and (d) of Section 4 do not make any reference to citizens. It is only in Sub-Section (e) of Section 4, where the statute requires that in case of marriages solemnized in Jammu and Kashmir, both parties have to be citizens of India.

11. The statute having made a clear distinction between ‘any two persons’ in the initial part, in contradistinction with ‘citizens’ in Sub-Section (e) of Section 4, it is clear that the requirement of at least one party being a citizen of India is not required under the Special Marriage Act.

12. The Guidelines for Issuance of Marriage Registration Certificate issued by the Revenue Department, Government of NCT of Delhi are given on the following URL:

https://edistrict.delhigovt.nic.in/eDownload/Eligibility/Guideline_9073.pdf

The said guidelines elucidating the eligibility criteria of marriages under the Special Marriage Act, 1953 read as:

- “III. The applicant is entitled for Marriage Registration Under and Special Marriage Act, 1954 if –
- ✓ One party either Groom or Bride must be a citizen of India.
 - ✓ Marriage has been solemnized within the territorial jurisdiction of NCT of Delhi.

- ✓ *Marriage has been solemnized between any two persons of different religion.*
- ✓ *The groom should be of 21 years of age and the bride of 18 years. (As on Marriage Date).*
- ✓ *Neither party has at the time of registration more than one spouse living. Neither party*
 - *is incapable of giving a valid consent of it in consequence of unsoundness of mind; or*
 - *though capable of giving a valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*
 - *has been subject to recurrent attacks of insanity or epilepsy;*
- ✓ *The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two*
- ✓ *The parties have been living together as husband and wife.*
- ✓ *The parties have been residing within the district in Delhi 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.*
- ✓ *Both the parties (Bride and Groom) shall be present in person along with three witnesses bearing proof of permanent resident of Delhi who shall certify to the solemnization of such marriage on the day of appointment with Marriage officer.”*

13. Therefore, it is clear that the directions given by various orders of the Delhi High Court have not been implemented by the Respondent Authorities and the guidelines are contrary to the statutory provisions as also the decisions of this Court extracted above. Accordingly, the following directions are issued: -

- (i) The Petitioners are permitted to approach the SDM Defence Colony on 17th January, 2023 in order to submit their form for solemnization and registration of marriage along with the requisite fee.
- (ii) The SDM shall process the same in accordance with the prescribed procedure without taking the objection that one of the persons has to be a citizen of India. Rest of the prescribed procedure shall be followed and the marriage shall be solemnized and registered in accordance with law.
- (iii) A status report shall be placed on record by the Secretary of the concerned Ministry GNCTD giving the details of the steps taken for amending the guidelines as also the steps taken for editing the requirements in the e-portal under the Special Marriage Act so as to ensure that the requirement of one of the parties being a citizen is not insisted upon.

14. Considering the fact that the directions of this Court date back to the year 2019, the status report indicating compliance with direction (iii) above shall be filed within four weeks, failing which, a senior official who is aware of the matter, shall join the proceedings either virtually or physically.

15. List on 20th April, 2023.

PRATHIBA M. SINGH
JUDGE

JANUARY 12, 2023
MR/am