

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2019

CORAM:

**THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU**

**W.P. (MD) No. 1567 of 2016
and
W.M.P. (MD) No. 1328 of 2016**

A. Kannan

... Petitioner

-vs-

1. The Principal Secretary to Government of Tamil Nadu,
Home (Court-IV) Department,
Secretariat,
Chennai – 600 009.
2. The Secretary to Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Secretariat,
Chennai – 600 009.
3. The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam,
Chennai – 600 028.
4. The Director General of Police,
4, Dr. Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

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5. The Secretary,
Bar Council of Tamilnadu & Puducherry,
High Court Campus,
Chennai – 600 104.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First to Third Respondents to issue appropriate directions to the Registrars of marriages in the State of Tamil Nadu, not to register the marriages that are solemnized in derogation to the personal laws of the parties to the marriages and to amend the Rules according to the changing scenario by making the presence of the parties to the marriages compulsory before the Registrars of marriages by disposing the Petitioner's written representation dated 23.12.2015 and consequently direct the Fifth Respondent to take appropriate action against Advocates who have given certificates of solemnization of marriages and registered the marriages in violation to the Tamil Nadu Registration of Marriages Act, 2009, within a time frame fixed by this Court.

For Petitioner : Mr. A. Kannan (Party-In-Person)

For Respondents : Mr. A.K. Baskarapandian,
Additional Government Pleader
(for R1 to R4)

Mr. Niranjan S. Kumar
(for R5)

ORDER

(Order of the Court was made by P.D. AUDIKESAVALU, J.)

The Tamil Nadu Registration of Marriages Act, 2009, (hereinafter referred to as 'the Act' for short) which came into force from 24.11.2009 was enacted pursuant to the directions issued in that regard by the Hon'ble Supreme Court of India in the decision in *Seema -vs- Ashwanikumar* [AIR 2006 SC 1158].

2. The grievance sought to be espoused by the Petitioner, who is a practising Advocate, in this Public Interest Litigation is that Section 5 of the Act does not make it mandatory for the presence of the parties to the marriage at the time of registration of their marriage and as consequence thereof, the Registrars of marriages under the Act have been registering marriages without verifying the solemnization of such marriage in accordance with the personal laws of the parties. In that backdrop, the Petitioner sought for the following reliefs:-

- (i) To direct the First to Third Respondents to instruct the Registrars of marriages in the State of Tamil Nadu to register the marriages that are solemnized in derogation to the personal laws of the parties to the marriages;

- (ii) To amend the Rules according to the changing scenario by making the presence of the parties to the marriages compulsory before the Registrars of marriages as sought in the representation dated 23.12.2015; and
- (iii) To direct the Fifth Respondent to take appropriate action against the Advocates who have given certificate for solemnization of marriages and registering the marriages in violation of the Act.

3. Heard the Petitioner, Mr. A. Kannan, who has appeared Party-In-Person, Mr. A.K. Baskarapandian, Learned Additional Government Pleader appearing for the First to Fourth Respondents, Mr. Niranjan S. Kumar for the Fifth Respondent and perused the materials placed on record, apart from pleadings of the parties.

4. Before proceeding further, it requires to be pointed out that the contentions of the Petitioner in this Writ Petition have been made without reference to Section 7 of the Act, which reads as follows:-

“7. Power to refuse registration of marriage:-

(1) Where the Registrar, before whom the memorandum is delivered or sent under Section 5 on scrutiny of the documents

filed with the memorandum or, on the other facts noticed or brought to his notice, is satisfied or has reason to believe that,-

(a) the marriage between the parties is not performed in accordance with the personal laws of the parties, or any custom or usage or tradition; or

(b) the identity of the parties or the witnesses or the persons testifying the identity of the parties and the performance of the marriage is not established beyond reasonable doubt; or

(c) the documents tendered before him do not prove the marital status of the parties,

he may, after hearing the parties and recording the reasons in writing, refuse to register the marriage and may,-

(i) call upon the parties to produce such further information or documents as deemed necessary, for establishing the identity of the parties and the witnesses or correctness of the information or documents presented to him, or

(ii) if deemed necessary, also refer the papers to the local police station within whose jurisdiction the parties reside, for verification.

(2) *Where, on further verification as provided in sub-section (1), the Registrar is satisfied that there is no objection to register the marriage, he may register the same. If in the opinion of the Registrar, he may pass an order of refusal in writing, recording the reasons therefor.”*

5. On a bare perusal of Section 7 of the Act, it is evident that an obligation has been cast on the Registrar of marriages, before registering a marriage, to be satisfied that the marriage between the parties has been performed in accordance with the personal laws of the parties or any custom or usage or tradition and that the identity of the parties has been established. In this regard, it would also be useful to refer to the decision of the Division Bench of this Court in ***S. Balakrishnan Pandiyan -vs- Superintendent of Police*** (Order dated 17.10.2014 in H.C.P. Nos. 2767 of 2013 and 2141 of 2014), while holding that marriage performed in secrecy at the Advocate's Chambers would not amount to solemnization, it has been abundantly made clear that no marriage can be done under the Act without the physical presence of the parties to the marriage before the Registrar of marriages, except under special circumstances after recording the reasons. Another Division Bench of this Court in ***E. Natarajan -vs- State*** (Order

dated 14.12.2015 in H.C.P. (MD) No. 1722 of 2015), has highlighted the manner of solemnization required for a valid marriage in respect of various religions as well as the requirement to comply with the secular nature of procedure prescribed under the Special Marriages Act, 1954.

6. In the light of the aforesaid legal position, we are of the considered view that it would be appropriate to direct the Third Respondent, viz., the Inspector General of Registration, to forthwith issue a circular to all the Registrars of marriages in the State of Tamil Nadu highlighting that in terms of Section 7 of the Act, as interpreted in the decisions of this Court mentioned supra, the physical presence of the parties to the marriage is necessary for the registration of their marriage and it shall be incumbent upon the parties applying for the registration of marriage to establish that the marriage between them has been performed in accordance with their personal laws or custom or usage or tradition. It shall also be indicated that if it is represented that any of the parties to the marriage could not be present due to any extenuating circumstances, the concerned Registrar of marriages would have to record reasons in writing in the event of accepting any such claim for exemption. It shall also be sternly warned that if any Registrar of marriages registers a marriage under the Act without complying

with the said mandatory requirements, he shall be liable for disciplinary action as per rules. A copy of such circular issued with the action taken report in this regard shall be filed by the Third Respondent before the Registrar (Judicial) of this Court by 28.02.2019.

7. Insofar as the claim made for directing the amendment of the Rules is concerned, we have already found that Section 7 of the Act contains adequate provisions regarding the lacunae complained by the Petitioner and as such, there is no requirement for amending the Rules as wanted by the Petitioner.

8. Coming to the last relief that appropriate action should be taken by Fifth Respondent, viz., Bar Council of Tamil Nadu and Puducherry, against Advocates, who have given certificates for solemnization of marriages and registered the marriages in violation of the Act, the Division Bench of this Court in *S. Balakrishnan Pandiyan -vs- Superintendent of Police* (Order dated 17.10.2014 in H.C.P. Nos. 2767 of 2013 and 2141 of 2014) has already held that if a complaint is made by a party to the marriage to the Bar Council of Tamil Nadu and Puducherry against a Priest-cum-Advocate, the Bar Council of Tamil Nadu and Puducherry shall take appropriate action in accordance with law and we reiterate the same.

9. Accordingly, the Writ Petition is disposed of with the aforesaid observations. No costs. Consequently, the connected Miscellaneous Petition is closed.

(K.K. SASIDHARAN, J.) (P.D. AUDIKESAVALU, J.)

22.01.2019

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Index : Yes

Internet : Yes

Note: Issue order copy by 30.01.2019.

To

1. The Principal Secretary to Government of Tamil Nadu,
Home (Court-IV) Department,
Secretariat,
Chennai – 600 009.
2. The Secretary to Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Secretariat,
Chennai – 600 009.
3. The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam,
Chennai – 600 028.

K.K. SASIDHARAN, J.
and
P.D. AUDIKESAVALU, J.

vjt

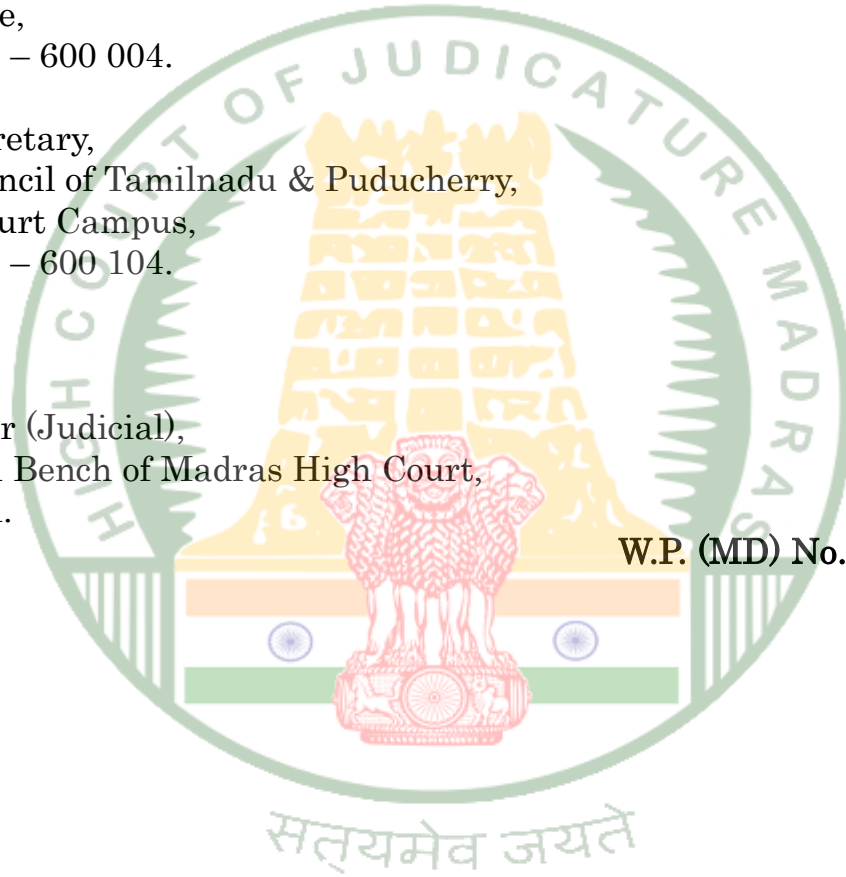
4. The Director General of Police,
4, Dr. Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

5. The Secretary,
Bar Council of Tamilnadu & Puducherry,
High Court Campus,
Chennai – 600 104.

Copy to

1. Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

W.P. (MD) No. 1567 of 2016



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