

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

THURSDAY, THE 3RD DAY OF FEBRUARY 2022 / 14TH MAGHA, 1943

WP(C) NO. 3055 OF 2022

PETITIONER:

JOEL K. YOYAKKIM

AGED 29 YEARS

**S/O. K.V.YOYAKKIM, VALIYAVEETIL HOUSE, PAMPADY,
KOTTAYAM-686516.**

BY ADV U.JAYAKRISHNAN

RESPONDENTS:

- 1 THE SUB REGISTRAR (MARRIAGE OFFICER),
OFFICE OF THE SUB REGISTRAR, PAMPADY-686502.**
- 2 THE INSPECTOR GENERAL OF REGISTRATION,
THIRUVANANTHAPURAM-695001.**
- 3 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO REGISTRATION DEPARTMENT,
THIRUVANANTHAPURAM-695001.**

SRI.APPU P S, GP

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JUDGMENT

Dated this the 3rd day of February 2022

The petitioner, who is an unmarried Indian Citizen, working as a Quartz Consultant, has approached this Court seeking to quash Ext.P4 Circular and to direct the 1st respondent to accept Exts.P8 and P9 documents submitted by the petitioner and his bride Miss Jeeva Joy.

2. Miss Jeeva Joy, aged 26 years, is a British Citizen holding an Overseas citizen of India card. The petitioner states that the petitioner and Miss Jeeva Joy intend to marry each other. They decided to solemnise their marriage under the provisions of the Special Marriage Act, 1954.

3. When they approached the 1st respondent-Marriage Officer, they were informed that for taking further steps for solemnisation and registration of marriage, petitioner has to produce a No Objection Certificate (NOC) and Bachelorhood Certificate issued by the concerned Embassy of the Foreign

Nation. These documents are insisted in view of Ext.P4 Circular dated 26.07.2021.

4. In view of the insistence made by the respondents, the bride Miss Jeeva Joy returned to Britain on 16.11.2021. She approached the Consular Directorate Office in London for the requisite Certificates. She was informed by the officials that British Government no longer issue a Certificate of Impediment or No Objection Certificate to British Citizens to get married in Commonwealth Countries for the reason that the marriage in the UK is governed by separate and different legislations in England and Wales, Scotland and Northern Ireland.

5. Thereupon, Miss Jeeva Joy executed Ext.P8 Single Status statutory declaration dated 10.01.2022 before a Solicitor authorised to Administer Oaths. The said declaration was Apostilled as per Ext.P9.

6. The petitioner seeks to direct the 1st respondent to accept Exts.P8 and P9 documents in respect of Miss Jeeva Joy and take appropriate steps for solemnisation and

registration of marriage.

7. The learned counsel for the petitioner urged that when the Foreign Country does not issue/ refuse to issue a Bachelorhood Certificate or Single Status Certificate to an overseas Citizen of India, the authorities in India cannot refuse registration of marriage on that ground. The only legally possible alternative for Miss Jeeva Joy to prove her Single Status was to get a declaration from a competent Attorney abroad. Miss Jeeva Joy has obtained such a declaration as per Ext.P8, which has duly Apostilled by her Majesty's Principal Secretary of State for Foreign, Commonwealth and Development Affairs, as is evidenced by Ext.P9. In the circumstances, the 1st respondent is compellable to solemnise and register the marriage of the petitioner and Miss Jeeva Joy invoking the Special Marriage Act, 1954.

8. The learned Government Pleader vehemently opposed the prayers in the writ petition. The learned Government Pleader submitted that in view of the Circular

dated 27.11.2019 issued by the Home Ministry of Union Government, NOC and Bachelorhood Certificate from the Embassy of the country of the spouse is to be insisted for registration of marriage. There are general observations of this Court also insisting that if an Indian Citizen wants to marry a foreign citizen, a Single Status Certificate from the Embassy is required. In such circumstances, the Government of Kerala has issued Ext.P4 Circular dated 26.07.2021 making it clear that for registration of such marriages, NOC and Bachelorhood Certificate issued by the Foreign Embassy shall be insisted. In view of the above, the marriage of the petitioner with Miss Jeeva Joy cannot be solemnised in the absence of NOC and Bachelorhood Certificate.

9. I have heard the learned counsel for the petitioner and the learned Government Pleader representing the respondents.

10. Miss Jeeva Joy is a British Citizen. She holds an Overseas Citizen of India Card. Miss Jeeva Joy intends to marry the petitioner. In view of Ext.P4 Circular dated 26.07.2021, the Marriage Officer insists production of NOC and Bachelorhood Certificate from the Foreign Embassy. Miss Jeeva Joy approached the Foreign Embassy in order to obtain the NOC and Bachelorhood Certificate. Ext.P6 Information Note dated 31.07.2013 issued by the British High Commission, New Delhi, would show that only the Courts in England and Wales can recognise a marriage under the English and Welsh law which has taken place in a foreign jurisdiction. Whether the Court will recognise such a marriage depends on two independent factors being satisfied separately: the parties must have capacity to marry and they must comply with the form of marriage. Capacity to marry is governed by the law of each party's domicile. The usual rule in terms of the form of marriage is that if a marriage is valid under local law, the marriage will be recognised in English and Welsh law. If the use of local form of

marriage is impossible, the marriage will be recognised if the marriage is celebrated in accordance with the requirements of the English and Welsh common law. A matter which goes to both capacity and form is consent. No marriage is valid by law of either party's domicile if one party does not consent to marry the other.

11. Section 4 of the Special Marriages Act, 1954 provides that for solemnisation of the marriage under the Act, a mandatory condition is that neither party has a spouse living. The problem faced by the petitioner is that the British Embassy does not issue the Certificate insisted by the respondents. Ext.P7 Information Note dated 12.05.2015 issued by the British High Commission, New Delhi, would indicate that the Rules of English law regarding domicile are extremely complex and consular staff are not qualified to assess or verify the domicile of an individual, nor are consular staff able to verify the country of domicile, place of residence, identity of an individual, marital status or criminal antecedents of a British National wishing to

marry in India. It is therefore, obvious that Miss Jeeva Joy cannot obtain any Certificate relating to her marital status from the British Embassy.

12. It is in such circumstances that the petitioner has made Ext.P8 Single Status declaration before a Competent Solicitor of the Supreme Court Authorised to Administer Courts on 10.01.2022. The declaration made in the presence of the Solicitor of the British Supreme Court has been Apostilled also by Her Majesty's Principal Secretary of State for Foreign, Commonwealth and Development Affaris, London as per Ext.P9.

13. This Court is of the view that if a Foreign Embassy does not issue a Single Status Certificate or NOC due to the law, rules and regulations prevailing in that country, Declarations or Certificates evidencing the same should be accepted in India for registration of marriage. This is for the reason that no one can be compelled to achieve an impossible task. In this case the petitioner has produced Ext.P8 Single

Status Statutory Declaration apostilled as evidenced by Ext.P9.

In the circumstances, refusal to solemnise and register the marriage by the intending parties, would result in grave injustice.

In the circumstances, the writ petition is disposed of directing the 1st respondent to accept Exts.P8 and P9 documents submitted by the petitioner and his bride Miss Jeeva Joy and proceed to solemnise and register the marriage, if all other conditions are satisfied.

sd/-

N.NAGARESH
JUDGE

hnh

APPENDIX OF WP(C) 3055/2022**PETITIONER EXHIBITS**

- Exhibit P1** TRUE COPY OF THE ADHAR CARD OF THE PETITIONER.
- Exhibit P2** TRUE COPY OF THE PASSPORT DETAILS OF JEEVA JOY.
- Exhibit P2 A** A TRUE COPY OF THE OVERSEAS CITIZEN OF INDIA CARD ISSUED BY THE CONSULATE GENERAL OF INDIA, BIRMINGHAM (UK) VIDE OCIC NO.A4084795 DATED 30.6.2021.
- Exhibit P3** TRUE COPY OF THE APPLICATION SUBMITTED UNDER SECTION 5 OF THE SPECIAL MARRIAGE ACT OF 1954 DATED 9.11.2021 DOWNLOADED FROM THE WEBSITE OF THE DEPARTMENT OF REGISTRATION KERALA.
- Exhibit P4** TRUE COPY OF CIRCULAR NO.J3/80/2021-TAX DATED 26.07.2021 ISSUED BY THE 2ND RESPONDENT INSPECTOR GENERAL OF REGISTRATION.
- Exhibit P5** A TRUE COPY OF THE SCREENSHOT OF INFORMATION ON GETTING MARRIED INDIA PUBLISHED ON THE WEBSITE OF [HTTPS://WWW.GOV.UK/MARRIGE-ABROAD/Y/INDIA/OPPOSITE SEX](https://www.gov.uk/marrige-abroad/y/india/opposite-sex).
- Exhibit P6** A TRUE COPY OF THE INFORMATION NOTE ON MARRIAGE ISSUED BY THE BRITISH HIGH COMMISSION DATED 31.7.2013.
- Exhibit P7** A TRUE COPY OF THE INFORMATION NOTE ON MARRIAGE TO BE READ ALONG WITH INFORMATION NOTE ON NOC DATED 31.7.2013 ISSUED BY THE BRITISH HIGH COMMISSION DATED 12.5.2015.
- Exhibit P8** A TRUE COPY OF THE SINGLE STATUS STATUTORY DECLARATION DATED 10.1.2022 EXECUTED BEFORE ANDREW SEDDON, A SOLICITOR AUTHORISED TO ADMINISTER OATHS.
- Exhibit P9** A TRUE COPY OF THE APOSTILLE DATED 12.1.2022 VIDE APO-2774675 DATED 12.1.2022 BY HER MAJESTY'S PRINCIPAL

	SECRETARY OF STATE FOR FOREIGN COMMONWEALTH AND DEVELOPMENT AFFAIRS.
Exhibit P10	A TRUE COPY OF THE RETURN TICKET DATED 12.2.2022 OF MISS JEEVA JOY.
Exhibit P11	A TRUE COPY OF THE ORDER DATED 4.1.2019 VIDE WP(C) 249/2019 BY THIS HON'BLE COURT.
Exhibit P12	A TRUE COPY OF THE ORDER OF THIS COURT IN WP(C) NO.35928 OF 2015 DATED NOVEMBER 27, 2015, CITED IN 2016 (I) KLJ (426).

RESPONDENT'S EXHIBITS NIL