

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR.JUSTICE V.G.ARUN

Thursday, the 19<sup>th</sup> day of January 2023 / 29th Pousha, 1944  
WP(C) NO. 666 OF 2023(G)

**PETITIONERS:**

**RESPONDENTS:**

1. THE MARRIAGE OFFICER SUB REGISTRAR OFFICE, ANGAMALI, ERNAKULAM DISTRICT, PIN - 683572
2. STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF REGISTRATION, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
3. UNION OF INDIA REPRESENTED BY SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF LAW AND JUSTICE, 4TH FLOOR, A-WING, SHASTRI BHAWAN NEW DELHI , PIN - 110001

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an interim direction to the first respondent to conduct an inquiry as per Section 8 of the Special Marriage Act, 1954 based on Exhibit P1 and to complete the inquiry within 2 days without waiting for 30 days period and to register the marriage of the petitioners as per Exhibit P1 on or before 13/01/2023 or alternatively at a date prior to 23-1-2023, if marriage officer is satisfied that he ought not to prevent solemnisation of the marriage and issue marriage certificate to the petitioners pending disposal of the Writ Petition (Civil).

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S.K.M.FIROZ, GEO PAUL, Advocates for the petitioners the court passed the following:

**V.G.ARUN, J.**

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**Dated this the 19<sup>th</sup> day of January, 2023**

**ORDER**

The petitioners are aggrieved by the refusal to solemnise their marriage based on Ext.P1 notice of intended marriage submitted on 05.01.2023, under Section 5 of the Special Marriage Act, 1954 ('the Act' for short). The essential facts are as under;

The first petitioner is working as Supervisor in a construction company in Oman. He reached Kerala on 10.12.2022 and has to return to Muscat on 24.01.2023, as his leave will expire on 25.01.2023. The second petitioner has returned to her native place after a long stint as teacher in Italy. It will be possible for the second petitioner to go along with the first petitioner after securing a Visa only if the marriage is solemnised on or before 13.01.2023. That will not

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be possible without the court's intervention since Section 5 of the Act prescribes a waiting period of 30 days after submission of the notice of intended marriage. The writ petition is hence filed to declare Section 5 of the Special Marriage Act, to the extent it mandates a waiting period of 30 days, to be unconstitutional or, in the alternative, to declare that the 30 days period after submission of notice of intended marriage mentioned in Section 5 and all consequential provisions under the Special Marriage Act are only directory and cannot be insisted upon.

2. Adv.K.M.Firoz, learned Counsel for the petitioners pressed for an interim order pointing out that, in the absence of a direction to solemnise the marriage, without insisting on the 30 days period, the writ petition will be rendered infructuous. It is contended that in view of the vast change in the social milieu from 1954 till date, Section 5 has to be interpreted

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progressively. Reference is made to the Division Bench decision of the Allahabad High Court, wherein, under similar circumstances, the court held that notice under Section 5 of the Act to be optional and granted liberty to the the parties to make a request in writing to the Marriage Officer to publish or not to publish a notice under Section 6 and follow the procedure of objections as prescribed under the Act. The court also observed that if the parties do not make a request for publication of notice in writing, while giving notice under Section 5 of the Act, the Marriage Officer shall not publish any such notice or entertain objections to the intended marriage and shall proceed with solemnisation of marriage. While thus proceeding, the Marriage Officer can verify the identification, age and valid consent of the parties and their competence to marry under the said Act. The court also observed that, in case of doubt, it shall be open for the Marriage Officer to ask for appropriate

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details/proof as per the facts of the case. Adv. Firoz pointed out that such progressive approach is adopted by the Apex Court also, by relaxing the six months waiting period after submission of joint petition under Section 13 B(2) of the Hindu Marriage Act, 1955 and of the one year waiting period between marriage and submission of divorce petition. It is contended that with the advancement of technology, it is now possible to verify and ascertain whether any of the objectionable factors in Section 4 exists, within a short span of time. The absence of such mandatory waiting periods in other related acts is also highlighted.

3. To his credit, the learned Counsel fairly pointed out that a Division Bench of this Court in **Deepak Krishna and another v District Registrar, Ernakulam and others [2007 (3) KLT 570]** has, in an identical situation, held that the certificate of marriage can be issued by the Marriage Officer only after the statutory period

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of 30 days, after registration of the marriage, is over, since the time frame of 30 days prescribed under Section 16 is a mandatory clause.

4. Adv.S.Manu, learned DSG submitted that the 30 days period prescribed under Section 5 has been incorporated to provide opportunity to raise objection against the proposed solemnisation. It is contended that the statutory provision has been in force for more than half a century and cannot therefore be overlooked for granting the interim relief. In this regard reliance is placed on the decision of the Supreme Court in **Health for Millions v Union of India and others [(2014) 14 SCC 496]**. Attention is also drawn to the decision in **Ajmal Ashraf M.and another v State of Kerala and another [2021 (2) KLT 213]**, wherein a learned Single Judge has held relaxation of the periods prescribed under Sections 5, 14 and 16 to be impermissible.

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5. Adv.S.Appu, learned Government Pleader adopted the contentions of the learned DSG and further submitted that, under the Scheme of the Special Marriage Act, the Marriage Officer is bound to conduct an enquiry when objection as to the proposal for solemnisation of marriage is found to be of substance. Any person aggrieved by the refusal to solemnise marriage after such enquiry can prefer an appeal. The above statutory provisions cannot be watered down, solemnisation of marriage being a serious affair. Attention is drawn to the decision in **Bhaurao Shankar Lokhande and another v. The State of Maharashtra and another [AIR 1965 SC 1564]**, wherein the term 'solemnise' was held to mean celebration of the marriage with proper ceremonies and in due form and not merely going through certain ceremonies.

6. Having heard the learned Counsel, I find that the issue highlighted in this writ petition requires detailed consideration. A lot of changes and liberalisation has taken place even in our

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customs and practices. Yet another aspect is that a large number of youngsters are employed abroad. Such people come back to their native place only on short vacations and instances are many where the marriage is conducted during the short holidays. The Special Marriage Act requires one of the intending spouses to have resided within the territorial limits of the jurisdictional Marriage Officer for at least 30 days before submitting the notice of intended marriage. Thereafter, the intending spouses have to wait for another 30 days to solemnise the marriage. Whether this waiting period is essential in view of the revolutionary changes in the information technology sector and changes in the social set up itself are matters that should engage the attention of the law makers. As rightly contended by the learned DSG, grant of an interim order will have the effect of stay of operation of the provision. This precisely is the dictum laid down by the Apex Court in **Health for Millions** (supra),



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the relevant portion of which is extracted hereunder;

*“13. We have considered the respective arguments and submissions and carefully perused the record. Since the matter is pending adjudication before the High Court, we do not want to express any opinion on the merits and demerits of the writ petitioner's challenge to the constitutional validity of the 2003 Act and the 2004 Rules as amended in 2005 but have no hesitation in holding that the High Court was not at all justified in passing the impugned orders ignoring the well-settled proposition of law that in matters involving challenge to the constitutionality of any legislation enacted by the legislature and the rules framed thereunder the courts should be extremely loath to pass an interim order. At the time of final adjudication, the court can strike down the statute if it is found to be ultra vires the Constitution. Likewise, the rules can be quashed if the same are found to be unconstitutional or ultra vires the provisions of the Act. However, the operation of the statutory provisions cannot be stultified by granting an interim order except when the court is fully convinced that the particular enactment or the rules are ex*

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*facie unconstitutional and the factors, like balance of convenience, irreparable injury and public interest are in favour of passing an interim order.*

This court cannot also ignore the Division Bench and Single Bench decisions holding the time stipulated in Section 5 to be mandatory. For the aforementioned reasons, the prayer for interim relief is declined.

Post the writ petition after a month. The respondents shall file counter affidavits in the meanwhile.

**Sd/-****V. G. ARUN****JUDGE**

Sc1/

**APPENDIX OF WP(C) 666/2023**

**Exhibit P1**

**A TRUE COPY OF THE NOTICE OF INTENDED MARRIAGE UNDER  
S.5 OF THE SPECIAL MARRIAGE ACT DATED 5/01/2023  
SUBMITTED BEFORE THE FIRST RESPONDENT BY THE  
PETITIONERS**

