

CASE NO.:
Transfer Petition (civil) 291 of 2005

PETITIONER:
Smt. Seema

RESPONDENT:
Ashwani Kumar

DATE OF JUDGMENT: 25/10/2007

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

TRANSFER PETITION 291 OF 2005

Dr. ARIJIT PASAYAT, J.

1. Pursuant to the order dated 23.7.2006, the matter was placed for our consideration. By judgment dated 14.2.2006 reported as Smt. Seema v. Ashwani Kumar (2006 (2) SCC 578), it was directed that all marriages shall be compulsorily registered. In the said order, it was inter alia noticed as follows:

"It has been pointed out that compulsory registration of marriage would be a step in the right direction for the prevention of child marriage still prevalent in many parts of the country. In the Constitution of India, 1950 (in short the 'Constitution') List II (the Concurrent List) of the Seventh Schedule provides in Entries 5 and 30 as follows:

"5. Marriage and divorce; infants and minors; adoption; wills; intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

30. Vital statistics including registration of births and deaths."

2. It is to be noted that vital statistics including registration of deaths and births is covered by Entry 30. The registration of marriage would come within the ambit of the expression 'vital statistics'.

3. From the compilation of relevant legislations in respect of registration of marriages, it appears that there are four Statutes which provide for compulsory registration of marriage. They are : (1) The Bombay Registration of Marriages Act, 1953 (applicable to Maharashtra and Gujarat), (2) The Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976, (3) The Himachal Pradesh Registration

of Marriages Act, 1996, and (4) The Andhra Pradesh Compulsory Registration of Marriages Act, 2002. In five States provisions appear to have been made for voluntary registration of Muslim marriages. These are Assam, Bihar, West Bengal, Orissa and Meghalaya. The "Assam Moslem Marriages and Divorce Registration Act, 1935," the "Orissa Muhammadan Marriages and Divorce Registration Act, 1949" and the "Bengal Muhammadan Marriages and Divorce Registration Act, 1876" are the relevant statutes. In Uttar Pradesh also it appears that the State Government has announced a policy providing for compulsory registration of marriages by the Panchayats and maintenance of its records relating to births and deaths. Under the Special Marriage Act, 1954 which applies to Indian citizens irrespective of religion each marriage is registered by the Marriage Officer specially appointed for the purpose. The registration of marriage is compulsory under the Indian Christian Marriage Act, 1872. Under the said Act, entries are made in the marriage register of the concerned Church soon after the marriage ceremony along with the signatures of bride and bridegroom, the officiating priest and the witnesses. The Parsi Marriage and Divorce Act, 1936 makes registration of marriages compulsory. Under Section 8 of the Hindu Marriage Act, 1955 (in short the 'Hindu Act') certain provisions exist for registration of marriages. However, it is left to the discretion of the contracting parties to either solemnize the marriage before the Sub-Registrar or register it after performing the marriage ceremony in conformity with the customary beliefs. However, the Act makes it clear that the validity of the marriage in no way will be affected by omission to make the entry in the register. In Goa, the Law of Marriages which is in force in the territories of Goa, Daman and Diu w.e.f. 26.11.1911 continues to be in force. Under Articles 45 to 47 of the Law of Marriages, registration of marriage is compulsory and the proof of marriage is ordinarily by production of Certificate of Marriage procured from the Register maintained by the Civil Registrar and issued by the concerned Civil Registrar appointed for the purpose by the Government. The procedural aspects about registration of marriages are contained in Articles 1075 to 1081 of the Portuguese (Civil) Code which is the common Civil Code in the State. It is pointed out in the affidavit filed on behalf of the respondent-State of Goa that the Hindu Act is not in force in the said State since it has not been extended to the State either by the Goa, Daman and Diu Laws Regulations, 1962 or by the Goa, Daman and Diu Laws No.2 Regulations, 1963 by which Central Acts have been extended to the State after the liberation of the State. Procedure for marriage is also provided in Code of Civil Registration (Portuguese) which is in force in the State. The Foreign Marriage Act, 1969 also provides for registration of marriages.

4. As noted above, the Hindu Act enables the State Government to make rules with regard to the registration of marriages. Under Sub-section (2) of Section 8 if the State Government is of the opinion that such registration should be compulsory it can so provide. In that event, the person contravening any rule made in this regard shall be punishable with fine.

5. In Various States different marriage Acts are in operation e.g. in Jammu and Kashmir, Jammu and Kashmir Hindu Marriage Act, 1980 empowers the Government to make rules to provide that the parties (Hindus) shall have their particulars relating to marriages entered in such a manner as may be prescribed for facilitating proof of such marriages. Admittedly,

no rules have been framed. As regards Muslims, Section 3 of the Jammu and Kashmir Muslim Marriages Registration Act, 1981 provides that marriage contracted between Muslims after the commencement of the Act shall be registered in the manner provided herein within 30 days from the date of conclusion of Nikah ceremony. However, the Act has not been enforced. So far as Christians are concerned, the Jammu and Kashmir Christian Marriage and Divorce Act, 1957 provides for registration of marriages in terms of Sections 26 and 37 for registration of marriages solemnized by Minister of Religion and marriages solemnized by, or in the presence of a Marriage Registrar respectively.

6. In exercise of powers conferred by Section 8 of the Hindu Act the State of U.P. has framed U.P. Hindu Marriage Registration Rules, 1973 which have been notified in 1973. In the affidavit filed by the State Government it is stated that the marriages are being registered after enactment of the Rules.

7. In Pondicherry, the Pondicherry Hindu Marriage (Registration) Rules, 1969 have come into force w.e.f. 7th April, 1969. All Sub-Registrars of Pondicherry have been appointed under Section 6 of the Indian Registration Act, 1908 (in short the 'Registration Act') as Marriage Registrars for the purposes of registering marriages. In the State of Haryana, the Haryana Hindu Marriage Registration Rules, 2001 under Section 8 of the Hindu Act have been notified. In the State of West Bengal, Hindu Marriage Registration Rules, 1958 have been notified.

8. The position prevailing in several States and Union Territories as follows:

"Accordingly, we direct the States and the Central Government to take the following steps:

(i) The procedure for registration should be notified by respective States within three months from today. This can be done by amending the existing Rules, if any, or by framing new Rules. However, objections from members of the public shall be invited before bringing the said Rules into force. In this connection, due publicity shall be given by the States and the matter shall be kept open for objections for a period of one month from the date of advertisement inviting objections. On the expiry of the said period, the States shall issue appropriate notification bringing the Rules into force.

(ii) The officer appointed under the said Rules the States shall be duly authorized to register the marriages. The age, marital status (unmarried, divorcee) shall be clearly stated. The consequence of non registration of marriages or for filing false declaration shall also be provided for in the said Rules.

Needless to add that the object of the said rules shall be to carry out the directions of this court.

(iii) As and when the central Government enacts a comprehensive statute, the same shall be placed before this court for scrutiny.

(iv) Learned counsel for various States and Union Territories shall ensure that the

directions given herein are carried out immediately. "

9. Learned amicus curiae has made reference to the status reports and affidavits filed by various states and Union territories, and has brought this Court's notice that some of the States have made registration of marriages by Hindus to be registered compulsorily but it has not been done in respect of other religions. By order dated 23.7.2007 with reference to the earlier order dated 14.12.2006, it was directed that the marriages are to be made compulsorily registrable in respect of persons who are citizens of India even if they belonged to various religions. Direction was given to file details of compliance.

10. From the details filed it appears that States of Andhra Pradesh, Bihar, Chattisgarh, Goa, Himachal Pradesh, Karnataka, Meghalaya, Mizoram, Rajasthan, Sikkim, Tamil Nadu, Tripura have complied with the direction. So far as the state of West Bengal is concerned, it has been submitted by the learned counsel for the State that on 22.12.2006, changes have been made to the West Bengal Special Marriages Rules, 1969, registration of Muslim marriages & Divorces Registration Rules and Hindu Marriage Act for the purpose of making marriages compulsorily registrable and providing for consequences for not doing it. It has been pointed out that Christian and Parsi marriages are solemnized through compulsory registration according to the applicable statutes. Therefore no separate rules have been framed in this regard. So far as other States and Union Territories are concerned, some of them have not filed any affidavit and in respect of others, the directions have been complied with respect of Hindus. The directions given by the order dated 24.2.2006 have not been fully complied with. We, therefore, direct that the States and Union Territories who have not acted in line with the directions given on 14.2.2006 shall forthwith do it and in no case later than three months from today. It is ordered accordingly.

11. Place this matter after four months.

12. The affidavits indicating compliance shall be filed before the next date of hearing.