

The State of Punjab, etc. v. Surjit Singh. (Koshal, J.)

---

(11) In another case (*Bachha Tiwari and another v. Divisional Forest Officer, West Midnapore Division and others*), (4), the same learned Judge, who decided *Shaw Brother's case*, held that chopping of their timber into firewood was a manufacturing process and, therefore, firewood was a manufactured article.

(12) The view of the learned Judge in the later case was dissented from by a Division Bench of this Court in *M/s. Pyare Lal Khushwant Rai v. The State of Punjab* (5).

(13) With respect to the learned Judge, we are unable to agree with the view expressed by him in the earlier ruling, namely, *Shaw Brother's case*.

(14) No other authority dealing with this point was cited before us.

(15) We would, therefore, answer the question in the negative, i.e., in favour of the assessee. In the circumstances of this case, however, we will leave the parties to bear their own costs.

MITTAL, J.—I agree. ..

B.S.G.

---

REVISIONAL CIVIL

Before A. D. Koshal, J.

THE STATE OF PUNJAB AND OTHERS,—*Petitioners.*

*versus*

SURJIT SINGH,—*Respondent.*

C.R. No. 132 of 1974.

31st May, 1974.

*Evidence Act (I of 1872)—Section 123—Character rolls and confidential reports of Public servants—Whether documents relating to the “affairs of State”—Such documents—Whether privileged under section 123.*

---

(4) 14 Sales Tax cases 1067.

(5) 1974 Revenue Law Reporter 34.

*Held*, that Character rolls and confidential reports of public servants are maintained for the purpose of providing an appraisal of their merits by their superiors from time to time. They are in the nature of confidential communications from one official to another and are meant to serve as part of the material designed to maintain the efficiency of the public service. The disclosure of the contents of such documents materially affects the freedom and candour of expression of opinion of those superior officers whose duty it is to make entries therein. The carrying on of the public administration in a proper manner is an "affair of State" and, therefore, documents which are maintained for the purpose of so carrying on the administration would relate to "affairs of State". Hence the Character rolls and confidential reports of public servant are documents relating to affairs of State and are privileged under section 123 of the Act.

*Petition under section 115 C.P.C. for revision of the order of Shri Mukhtar Singh Gill, Senior Subordinate Judge, Kapurthala, dated August 24, 1973 rejecting their claim of privilege.*

S. K. Jain, Advocate, for Advocate-General, (Punjab).

Ashok Bhan, Advocate, for the Respondent.

#### JUDGMENT.

KOSHAL, J.—This petition under section 115 of the Code of Civil Procedure has been filed by the State of Punjab, the Director of Food and Supplies, Punjab, Chandigarh and the Collector, Kapurthala, who are the defendants in a suit instituted by the plaintiff-respondent against them for a declaration that his retirement from service before he reached the age of superannuation was illegal and violative of various provisions of the Constitution of India. During the course of the proceedings before the trial Court the plaintiff filed an application requesting the Court to summon the Administrative Officer, Food and Supplies Department, Punjab, Chandigarh as a witness with a direction to him to produce in Court the character rolls and confidential reports maintained in the Department in respect of the plaintiff who, at the time of his retirement, was an Inspector in that Department, and of four other Inspectors who were junior to him but were retained in service. The defendants took exception to the production of those documents and claimed privilege under section 123 of the Indian Evidence Act on the ground (which is contained in the affidavit filed by Mr. B. B. Mahajan, Secretary to Government, Punjab, Food and Supplies Department, Chandigarh), that the documents were unpublished official records relating to "affairs of State" and that their disclosure

would be prejudicial to the public interest inasmuch as it would adversely affect the functioning of the public service because officers of the Government will not express their opinion freely and frankly while making entries in the character rolls or confidential reports relating to their subordinates if they (the said officers) knew that their remarks were likely to be made public. The learned Senior Sub-Judge, Kapurthala before whom the case is pending disallowed the privilege on the ground that the documents above mentioned did not relate to "affairs of State". For his view he sought support from the *Union of India & others vs. Raj Kumar Gujral*, (1) and *Ram Gopal vs. Union of India and others*, (2) from which he cited various passages and then observed :

"In the case in hand, the plaintiff has repeatedly asserted that his assessment by the defendants was in no way lower than the officials mentioned in the documents aforementioned and that the authorities had arbitrarily retired him from service though the other officials mentioned in these documents had been retained in service and indeed promoted arbitrarily. Thus, the aforesaid documents are quite relevant to the determination of the plaintiff's contention and indeed constitute a piece of best evidence relied upon by him. It is not possible to visualise the merits of the case which will be determined in the light of the full evidence to be adduced by the parties, uninfluenced by the observations (made in this order) which are confined to the determination of the claim of privilege only. In the context in view of the rule laid down in the aforesaid pronouncements, I conclude that the defendants have not made out sufficient grounds to the claim successfully of privilege for the production of the documents aforesaid under section 123 of the Indian Evidence Act."

It is against the disallowance of the claim of privilege put forward by the defendants that they have come up in revision to this Court.

2. In my opinion, the petition merits acceptance inasmuch as the character rolls and confidential reports which the plaintiff seeks to have produced at the trial are documents, evidence derived from

(1) A.I.R. 1967 Punjab 387.

(2) 1972 S.L.R. 258.

which cannot be given in view of the provisions of section 123 of the Indian Evidence Act which runs thus :

“No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.”

3. In *Governor General in Council v. H. Peer Mohd. Khuda Bux and others*, (3) Khosla, J., gave a restricted meaning to the expression “affairs of State” in the following words :

“I would define ‘affairs of State’ as matters of a public nature in which the State is concerned and the disclosure of which will be prejudicial to the public interest or injurious to national defence, or detrimental to good diplomatic relations.”

In a separate judgment J. L. Kapur, J., described the object underlying section 123 thus :

“But the sole object of this privilege \* \* \* \* \*  
\* \* \* \* \*  
is that the disclosure would be injurious to national defence or to good diplomatic relations or for the proper functioning of the public service and it is necessary to keep that document or that class of documents secret.”

The view of Kapur, J., therefore, as to the meaning of “affairs of State” was substantially the same as that of Khosla J., This view, however, did not find favour with their Lordships of the Supreme Court in *The State of Punjab v. Sodhi Sukhdev Singh*, (4). In that case Sodhi Sukhdev Singh, a former District and Sessions Judge in the erstwhile Patiala and East Punjab States Union, filed a suit against that Union for a declaration that the order of his removal from service was illegal and inoperative. At the trial he summoned various documents. Some of those were produced by the State but privilege was claimed in respect of the following :

1. Original recommendation by the then Chief Justice on the preliminary inquiry held by two Judges of the High Court against the plaintiff.

(3) A.I.R. 1950 E.P; 228 (F.B.;

(4) A.I.R. 1961 S.C, 493.

The State of Punjab, etc. v. Surjit Singh. (Koshal, J.)

---

2. Original recommendation of the then Chief Justice on the report of the Judges recommending suspension of the plaintiff.
3. Report of the Public Service Commission on the representation by the plaintiff.
4. Original order passed by the Pepsu Government on 28th September, 1955 on the representation of the plaintiff.
5. Original order passed by the Pepsu Government on 8th March, 1956 reaffirming its decision taken on 28th September, 1955, referred to above.
6. Original order passed by the Pepsu Government in their Cabinet Meeting, dated 11th August, 1956, revising their previous orders.
7. Memorandum prepared by the Home Department after the Pepsu Government had passed their order, dated 28th September, 1955.
8. Original report of the A.S.P., C.I.D., regarding his and another person's interview with the former Chief Justice.

The trial Court upheld the claim of privilege but in revision a Division Bench of the High Court negatived the same in respect of the documents at serial Nos. 3, 4, 5 and 6, while upholding it in respect of the other four (*Sodhi Sukhdev Singh v. State of Punjab*, (5). The order of the High Court was based on the dictum in *Governor General in Council v. H. Peer Mohd. Khuda Bux and others* (F.B.) supra and was challenged in appeal before the Supreme Court. Gajendragadkar, J. (as he then was) who spoke for the majority, interpreted section 123 thus :

What are the affairs of State under Section 123 ? In the latter half of the Nineteenth Century affairs of State may have had a comparatively narrow content. Having regard to the notion about governmental functions and duties which then obtained, affairs of State would have meant matters of political or administrative character relating, for instance, to national defence, public peace and security and good neighbourly relations. Thus, if the contents of the documents were such that their disclosure would affect either the national defence or public

security or good neighbourly relations they could claim the character of a document relating to affairs of State. There may be another class of documents, which could claim the said privilege not by reason of their contents as such but by reason of the fact that, if the said documents were disclosed, they would materially affect the freedom and candour of expression of opinion in the determination and execution of public policies. In this class may legitimately be included notes and minutes made by the respective officers on the relevant files, opinions expressed, or reports made, and gist of official decisions reached in the course of the determination of the said questions of policy. In the efficient administration of public affairs government may reasonably treat such a class of documents as confidential and urge that its disclosure should be prevented on the ground of possible injury to public interest. In other words, if the proper functioning of the public service would be impaired by the disclosure of any document or class of documents such document or such class of documents may also claim the status of documents relating to public affairs.

"It may be that when the Act was passed the concept of governmental functions and their extent was limited, and so was the concept of the words 'affairs of State' correspondingly limited, but, as is often said, words are not static vehicles of ideas or concepts. As the content of the ideas or concepts conveyed by respective words expands, so does the content of the words keep pace with the said expanding content of the ideas or concepts, and that naturally tends to widen the field of public interest which the section wants to protect. The inevitable consequence of the change in the concept of the functions of the State is that the State in pursuit of its welfare activities undertakes to an increasing extent activities which were formerly treated as purely commercial, and documents in relation to such commercial activities undertaken by the State in the pursuit of public policies of social welfare are also apt to claim the privilege of documents relating to the affairs of State."

The State of Punjab, etc. v. Surjit Singh. (Koshal, J.)

---

and held that the construction placed on the words "affairs of State" in section 123 by Khosla, J., was too narrow and could not be treated as exhaustive. His Lordship was, therefore, of the opinion that the judgment of the High Court suffered from the infirmity that it confined itself to an examination of the question whether the documents of which production was sought by the plaintiff fell within the definition of the term "affairs of State" given by Khosla, J., in *Governor General in Council v. H. Peer Mohd. Khuda Bux and other* (F.B.) supra. In view of the interpretation placed by Gajendragadkar, J., on the expression "affairs of State" his Lordship held that all the eight documents specified above related to "affairs of State" and that the privilege was rightly claimed. The order passed by the High Court was, therefore, set aside and that of the trial Court was restored.

4. The concept of "affairs of State" as expounded by Gajendragadkar, J., would certainly make the documents with which I am here concerned fall within the bar created by section 123. Character rolls and confidential reports are maintained for the purpose of providing an appraisal of the merit of State Servants by their superiors from time to time. They are in the nature of confidential communications from one official to another and are meant to serve as part of the material designed to maintain the efficiency of the public service. The disclosure of the contents of such documents would certainly affect materially the freedom and candour of expression of opinion of those officers whose duty it is to make entries therein. The carrying on of the public administration in a proper manner cannot but be regarded as an "affair of State" and, therefore, documents which are maintained for the purpose of so carrying on the administration would relate to "affairs of State". This, in my opinion, follows directly from the wider meaning given to the expression "affairs of State" by Gajendragadkar, J., in *The State of Punjab vs. Sodhi Sukhdev Singh* (supra). This was also the view taken by Pandit, J., in *Bhanu Parkash vs. The State of Punjab*, (6). There, the plaintiff who had challenged his dismissal from Government service sought the production by the State of notings by various officers and communication made in official confidence by one officer to another. The Secretary of the Department concerned claimed privilege in respect of the documents on the ground that their disclosure would materially affect the freedom and candour of

expression of opinion in the determination and execution of public policies. Relying on *The State of Punjab vs. Sodhi Sukhdev Singh* (supra) Pandit, J., upheld the order of the trial Court which had allowed the claim, on the ground that the documents related to "affairs of State". The same view was expressed in *H. L. Rodhey and others v. Delhi Administration and others* (7). In that case certain employees of the Delhi Administration were not promoted to higher posts by the Departmental Promotion Committee which did not find them fit for the purpose. They filed a petition under Article 226 of the Constitution of India with the Delhi High Court and sought production of the files of the Delhi Administration in which their cases were considered and they were not found to be fit for promotion. The Delhi Administration claimed privilege which was allowed by Hardy and Desphande, JJ., with the following observations:

"It is clear that the documents belong to a class, the non-disclosure of which was necessary for the proper functioning of the public service and the disclosure of which would affect the freedom and candour of expression of public servants and would, thus, cause injury to public interest".

Reliance was placed by the Division Bench on *The State of Punjab v. Sodhi Sukhdev Singh* (Supra).

5. Learned counsel for the plaintiff-respondent has contended that character rolls and confidential reports maintained by the superiors of a Government employee cannot be considered documents relating to "affairs of State". In support of the contention he has cited a few authorities, including these referred to by the trial Court, which I have carefully examined but none of which, in my opinion, lends him any assistance. I now proceed to examine them.

6. In *The Union of India and others vs. Raj Kumar Gujral*, (1), which is one of the two decisions relied upon by the trial Court, the plaintiff sued for a declaration to the effect that the order of termination of his services, dated the 1st of February, 1964; passed by the Deputy Director Animal Husbandry, Delhi was void and illegal. It appears that that order was communicated to the plaintiff on the basis of another order passed by the Deputy Director, Animal Husbandry, Delhi on the 31st of January, 1964, which the

---

(7) A.I.R. 1969 Delhi 246.



The State of Punjab, etc. v. Surjit Singh. (Koshal, J.)

---

plaintiff summoned at the trial. Shri L. S. Titus, Development Commissioner, Delhi Administration, claimed privilege in the following terms:

“I have carefully read and considered the said document and have come to the conclusion that the said document is an unpublished official record relating to the affairs of the State and that its disclosure will cause injury to public interest for the following reasons:

The above document is privileged document because the freedom and candour of expression of opinion in the determination and execution of public policy would be materially affected by its disclosure and I consider that this document should be kept secret for ensuring the proper functioning of the public service.”

The claim for privilege was rejected by the trial Court whose decision on the point was affirmed by S. K. Kapur J., who refused to treat the summoned document as one relating to ‘affairs of State’ with the observations :

“On behalf of the respondent, on the other hand, the contention is that though the order, dated 1st February, 1964 was communicated to him that was merely communication on the basis of the order of termination passed on 31st January, 1964. I have already said that in the affidavit filed by Shri Titus it has not been alleged that the order asked for was not an order of termination at all. From the said order the plaintiff seeks to show that though purporting to act under rule 5, the plaintiff was in fact punished. I am not satisfied that merely because some officer may have expressed a particular opinion in the said order of termination about the plaintiff, its disclosure will, in any way prejudice the proper functioning of the public service. If that were so in all cases then no Government servant would be entitled to show that the order in substance amounts to punishment, which is his constitutional right. The affidavit of Mr. Titus merely states that the disclosure will materially affect the freedom and candour of expression, but it does not state that the document contains matters relating to public service. The authority may form such an opinion even about an

---

innocuous document. But that is not enough. They must show that the document is noxious."

Although S. K. Kapur, J., did not say in so many words that he was agreeing with the trial Court's opinion for the reason that though the order, dated the 31st of January, 1964, related to "affairs of State" it was not an *unpublished* official record that appears to be the real reason for the view he took. By handing over the order dated the 1st of February, 1964, to the plaintiff what the Deputy Director, Animal Husbandry, had communicated to him was the decision taken on the 31st of January, 1964, which, therefore, did not remain unpublished. I may clearly state here, however, that if the decision of S. K. Kapur J., be taken to mean that orders sought to be produced by the plaintiff did not relate to "affairs of State", I must, with all respect differ from him, as that would be a result which cannot be arrived at in view of the dictum of their Lordships of the Supreme Court in *The State of Punjab vs. Sodhi Sukhdev Singh* (supra) which was cited before S. K. Kapur, J., and from which he quoted the relevant portions.

7. In *Niranjan Dass Sehgal v. State of Punjab*, (8), Tek Chand, J., held that records of a departmental enquiry were not unpublished documents relating to "affairs of State" and that therefore, where the probity of the conduct of a public servant was a matter in issue the State could not screen his conduct from the purview of the Court on the ground that it was an "affair of State". Taken at its face value the decision will provide support for the contention raised on behalf of the plaintiff. It is to be noted, however, that it is based on the narrow interpretation placed on the words "affairs of State" in *Governor General in Council vs. H. Peer Mohd. Khuda Bux and others* (supra). That interpretation, as already seen, was not considered exhaustive enough by the Supreme Court in *The State of Punjab vs. Sodhi Sukhdev Singh* (supra), which was not brought to the notice of Tek Chand, J., and which renders that interpretation obsolete. The decision of Tek Chand, J., therefore, cannot be said to be laying down good law.

8. The second decision relied upon by the trial Court is *Ram Gopal vs. Union of India and others*, (2). Therein Ram Gopal, a member of the Superintendents (Class II Gazetted) Service, attached the proceedings of the Departmental Promotion Committee

The State of Punjab, etc. v. Surjit Singh. (Koshal, J.)

---

who had considered the claims of various officials for promotion to the post of Superintendent in a petition under Article 226 of the Constitution of India. During the pendency of his petition he summoned the following documents from the Union of India:

- (a) Proceedings of the Departmental Promotion Committee which allegedly screened the erstwhile Superintendents on the initial constitution of the service;
- (b) Confidential reports on the petitioner for the last 5 years;
- (c) File relating to the constitution of the Departmental Committee mentioned in (A) above and the minutes of the proceedings relating to screening also referred to in (a) above.

The petition was allowed in respect of documents (a) and (c) but rejected in so far as the confidential reports were concerned on the ground that they were not relevant to the decision of the case. The Court, therefore, did not give any decision as to whether confidential reports about a Government employee recorded by his superiors were or were not documents relating to "affairs of State". The decision, therefore, has no application to the facts of the present case.

9. In *Jaggannath Dwarkanath Raje vs. The State of Maharashtra* (9) privilege was raised in the affidavit filed on behalf of the State and it was, therefore, that the Division Bench of the Bombay High Court held that a presumption could be made against the State by reason of its failure to produce relevant documents. This decision is also clearly in applicable to the situation prevailing in the present case.

10. In *Dattaram Sadashiv Rane vs. The State of Maharashtra*, (10), also the State failed to claim privilege through an affidavit and it was in that situation that an inference adverse to it was drawn by reason of non-production of material documents. That case, therefore, also does not advance the case of the plaintiff.

11. Before concluding this judgment I may observe that although the learned Senior Subordinate Judge reproduced various

---

(9) 1972 S.L.R. 543.

(10) 1973 (2) S.L.R. 449.

passages from the *Union of India and others vs. Raj Kumar Gujral* (supra) and *Ram Gopal vs. The Union of India and others* (supra). he made no effort to apply them to the case in hand, the claim of privilege raised, to which he rejected on the sole ground that the character rolls and confidential reports were relevant to the determination of the plaintiff's contention and "indeed constitute a piece of best evidence relied upon by him". His approach to the problem was wholly misconceived inasmuch as he failed to grasp the principle underlying section 123 of the Indian Evidence Act which makes subservient the need of the individual to the need of the State and provides a complete bar to the production of evidence if the same is derived from unpublished official records relating to "affairs of State".

12. For the reasons stated I hold that the documents of which the plaintiff seeks production at the trial contain evidence of the type just above mentioned and as the head of the department concerned has claimed privilege in respect thereof, evidence derived therefrom cannot be given. Accordingly I accept the petition, set aside the impugned order and all allow the claim of privilege made behalf of the State. There will be no order as to costs.

Announced in open Court. Inform counsel for the parties.

B. S. G.

Before D. S. Tewatia, J.

M/S FRICK INDIA LIMITED, JEEWAN VIHAR, PARLIAMENT STREET, NEW DELHI,—Appellant.

versus

THE EXECUTIVE ENGINEER AND ANOTHER,—Respondents.

F.A.O. 262 of 1972

16th July, 1974.

*Arbitration Act (X of 1940)—Sections 14 and 38—Award given by an arbitrator, in possession of a party to arbitration—Such party—Whether competent to have the award made a rule of the Court without getting it filed in Court—Receipt of award by registered post from the arbitrator—Whether notice under section 14(1) of the Act.*