REVISIONAL CIVIL

Before S. S Dulat and Inder Dev Dua, JJ.

SODHI SUKHDEV SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent*

Civil Revision No. 596 of 1959.

1960

Jan., 19th

Evidence Act (I of 1872)—Section 123—"affairs of State"—What amounts to—"Disclosure will be prejudicial to public interest"—Authority to determine—Whether the Court or the Head of the Department—Respective rights and duties of the Court and the State in such matters—Document containing observations of the Head of the Department in the course of investigation into the misconduct of a Government servant—Whether privileged—Office notings and memorandum prepared by Cabinet Secretariat for consideration by the Cabinet—Whether privileged—Inter-departmental Communications and Discussions—Whether privileged Public Service Commission—Opinion of—Whether privileged—Matters to be considered by the Head of the Department while claiming privilege indicated.

Held, that in order to amount to an "affair of State" as used in section 123, Indian Evidence Act, the matter in question must be of a public nature in which the State is concerned and also the disclosure of which will be prejudicial to the public interest or injurious to national defence or detrimental to good diplomatic relations.

Held, that the question that the disclosure will be prejudicial to the public interest has to be decided by the court which has a right and is indeed under a duty to satisfy itself that the document does in fact relate to "affairs of State". The decision of the Head of the Department, which is to be considered conclusive, is the decision to withhold the permission to produce the document in his discretion after the Court has determined that it does actually relate to 'affairs of State'. It is within the peculiar province of the Court to carefully consider and determine that the document in question does in fact relate to 'affairs of State' before conceding to the Department concerned, what in effect amounts to a general sweeping power wholly to suppress, from every source of facts, what may at times be the

most vital and conclusive piece of evidence, on the mere unexaminable opinion of an officer as to what he considers to be prejudicial to public interest. While the Courts in this Republic should never be hesitant in preventing improper disclosure of matters, truly injurious to the vital public interest, it is also of obvious importance to ensure generally that claims of privilege by the State—particularly in litigation involving possible liability of the State—are not used unnecessarily, in bureaucratic routine, even though apparently in good faith, to the detriment of the vital need of the Courts to have the truth put before them.

Held, that the claim of privilege on the ground that the disclosure will be prejudicial to the public interest inasmuch as the expressions of opinion by the Cabinet Minister on earlier occasions were intended to be secret and confidential and their disclosure would serve as a clog on the freedom of deliberations and expressions of views and would run counter to the administrative policy and the Rules of Business made by the Government is untenable. Merely because the public functionaries, who are expected to function according to law, feel restive when their acts are lawfully and within permissible limits scrutinised by the Courts to see whether they have acted beyond the power vested in them by law, can by itself rarely—if at all— provide a justifiable ground for claiming privilege so as to keep their activities secret and to withhold them from Courts and thus to hinder the due administration of justice. Secrecy in such common routine of business can seldom be legitimately desired, particularly in our system of Government.

Held, that it is true that the State has a right and also a duty in certain circumstances to withhold documents from production in Courts; but it is equally undeniable that the Court is entitled, and indeed is duty-bound, to look with jealous care on any exercise of executive power which has the effect of overriding or ousting of jurisdiction of the Courts in matters which are *prima facie* peculiarly within their province. Where, therefore, a matter is asserted to relate to national defence or good diplomatic relations or public safety and law and order, the precedence or primacy of the public interest must readily be accepted. But where the public interest is only confined to the so-called administrative policy of the Executive Authorities, functioning

under a system of representative Government and removable officials, to keep their decisions secret and confidential, then it must clearly and constantly be borne in mind that the requirement of due administration of justice is also considered in this Republic to be in the public interest in the highest degree. In a democratic State like ours, where Rule of Law is a basic guiding principle, when a justiciable dispute between the State and one of its citizens is taken to Court, opinion honestly expressed by the Ministers on the citizen's representations relating to such dispute if otherwise relevant, should, in the absence of some special supervening military or international consideration like defence of the realm or diplomatic relations, or considerations of security or law and order, be made available to the Courts which is called upon to adjudicate upon the dispute. To withhold from the Court such documents, if otherwise relevant, and in the absence of supervening factors as mentioned above, may itself prove highly prejudicial to the public interest as being calculated to obstruct, and to undermine the faith and confidence of the citizens in the efficient, impartial and due administration of justice.

Held, that when an investigation is held into the misconduct of a Government servant and the Head of the Department makes some observations in the course of such investigation, disclosure thereof might well be prejudicial to the public interest. If, therefore, the Head of the Department after considering the various aspects in his discretion withholds permission to its production in Court, the latter should, generally speaking, accept it. Similarly, the memorandum prepared by the Cabinet Secretariat for the purposes of consideration of the case by the Cabinet and office notings can legitimately be held to relate to affairs of State and thus privileged and protected, if the Head of the Department chooses to withhold their production. The communications and discussions, even though recorded in writing, between the investigation Department and the Head of the Department with respect to the investigation into the alleged misconduct of the Departmental employees can also be considered to relate to affairs of State in respect of which the Departmental Head is competent to claim privilege.

Held, that the disclosure of the opinion given by the Public Service Commission on the facts of a case stated to

it by the Government cannot be said to be prejudicial to the public interest and no privilege can be claimed in respect thereof.

Held, that the opinion of the Head of the Department withholding production of documents being unexaminable by the Court, it is expected that he would most carefully scrutinise the documents within the ambit of the privilege and after examining each document, ask himself whether it is relevant to the plaintiff's case, whether the plaintiff's case would be hampered or impeded if it is not made available, and, if so, the probability of any harm being done to the public interest by disclosing it, is sufficient to outweigh those considerations which are vital to the proper, efficient and impartial administration of justice. Even if a document falls within the ambit of privilege, the Head of the Department might well decide not to claim the privilege and might agree to produce the relevant document in Court, for he is not bound necessarily to claim privilege merely because a document relates to 'affaris of State'; it can only be claimed on settled principles and when secrecy is truly indispensable.

Petition under section 115, Civil Procedure Code, and Article 227 of the Constitution of India, for revision of the order of Shri M. R. Sikka, Sub-Judge, 1st Class, Patiala 'B', dated 27th August, 1959, accepting the defendant's claim of privilege in respect of all the documents except one, i.e., original report of Shri Nand Lal, S.I., C.I.D., of the open Departmental Enquiry Proceedings, .dated 17th October, 1952, in the case of Sodhi Sukhdev Singh, District and Sessions Judge.

Application for production of certain documents from the defendant and claim of privilege by the defendant in a suit of declaration and recovery of Rs. 62,700-6-0.

D. N. AWASTHY, for the Petitioner.

C. D. DEWAN, Assistant Advocate-General, for the Respondent.

JUDGMENT

DUA, J.—This case has been placed before us because a learned Single Judge of this Court, Dua, J.

Sodhi Sukhdev Singh
v.
The State of Punjab

before whom the matter came up in the first instance, considered it to be of importance and not free from difficulty.

Dua, J.

Sodhi Sukhdev Singh the plaintiff, who is now the petitioner in this Court, was a District and Sessions Judge in the erstwhile State of Pepsu. On the basis of certain alleged complaints a preliminary inquiry was ordered into his conduct as a result of which he was suspended by H. H. the Rajpramukh. After further inquiry he was removed from service on 7th April, 1953, after the necessary show-cause notice. His representation against his removel was rejected by the Government in March, 1956. In the present suit he has sought declaration that the order of his removal from service was illegal, *ultra vires* and in-operative and that he still continues to be in the service of the defendant (*i.e.*, the Government of Punjab). He has also claimed a sum of about Rs. 62,700.

During the course of the proceedings he summoned various documents from the defendant, some of which were produced, but in respect of the following documents privilege was claimed :—

(1) Original recommendation made by S.B.S. Teja Singh, on the preliminary inquiries held by Mr. Justice Gurnam Singh and Mr. Justice G. L. Chopra, on the basis of which suspension orders were passed by the Government.

(2) Original recommendation of S.B.S. Teja Singh, on the report of Mr. Justice Gurnam Singh and Mr. Justice G. L. Chopra, recommending the suspension of Sodhi Sukhdev Singh. (In fact these two documents are identical.).

(3) Report of the Public Service Commission on the representation, dated 18th May, 1955, of Sodhi Sukhdev Singh after the Pepsu Government decision, date 28th September, 1955.

(4) Original order passed by the Pepsu Government on 28th September, 1955 on the representation, dated 18th May, 1955 of Sodhi Sukhdev Singh.

(5) Original order passed by the Pepsu Government on 8th March. 1956, re-affirming 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 on the representation. dated 18th May, 1955 of Sodhi Sukhdev Singh.

(7) Memorandum prepared by the Home Department after the Pepsu Government had passed their order, dated 28th September, 1955 on Sodhi Sukhdev Singh's representation, dated 18th August, 1955, and re-affirmed the same decision on 8th March, 1956 along with Annexure 'A' and 'D' which are also memorandums prepared by the Cabinet Secretariat.

(8) Original report of Pandit Piara Lal. A.S.P., C.I.D., regarding his and Dewan Chetan Dass' interview with the former Chief Justice S.B.S. Teja Singht in connection with the evidence of Hari Krishan Ahalmad, Baldev Singh and

Sodhi Sukhdev Singh
v.
The State of Punjab

Rajinder Kumar, clerk, in connection with the departmental inquiry of Sodhi Sukhdev Singh.

Dua, J.

With respect to documents at serial Nos. 1 to 7 Shri E. N. Mangat Rai, Chief Secretary to Government, Punjab, has sworn affidavits that they constitute unpublished official records relating to the affairs of the State and that their disclosure would be detrimental to the public interest. With respect to the document at serial No. 8, the necessary affidavit has been sworn by Shri Waryam Singh, I.G. Police. Tht trial Court, after considering the arguments addressed to it, upheld the privilege, observing that the definite and self-contained affidavits of the two officers, based on adequate material, explained the details as to how the disclosure of the documents in question would be prejudicial to the public interest, and there being nothing on the record to show that these affidavits have been falsely or capriciously given by the Heads of the Departments they should be considered to be conclusive.

Before dealing with the documents, which are the subject-matter of the privilege, I may state that the correctness of the decision of a Ful Bench of this Court in *Governor-General in Council* v. *Peer Mohammad Khuda Bakhsh and others* (1), has not been questioned at the Bar and it is agreed that the rule laid down in the reported case is binding on us. This has made our task comparatively easier. In this judgment G. D. Khosla J., (as he then was) observed as follows at page 233:—

> "It is, therefore, sufficiently clear that the expression 'affairs of State' as used in section 123, Evidence Act, has a restricted meaning, and on the weight of

(1) A.I.R. 1950 E.P. 228

> authority both in England and in this Country, 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."

A little lower down at page 236 of the report the same learned Judge spoke as follows :—

> "I am, therefore, unable to accept the contention that the Court can hold no inquiry into the validity of the objection the moment privilege is claimed by the head of the department. It is nevertheless true that once the Court comes to the conclusion that the document relates to affairs of State the decision of the head of the department to give or withhold permission to its production must be accepted as final. On this point the Court cannot question the discretion of the head of the department."

While dealing with the question as to in what manner the Court is to hold the necessary inquiry when the inspection of the document is barred and in what form must the objection be taken, it has been stated in the reported case that the witness called upon to produce documents must appear in Court and bring the documents with him and then claim privilege. The Head of the Department is enjoined to examine the documents and consider whether privilege should or should not be claimed in respect of them. He may then either appear in person before the Court to raise the objection or direct one of his subordinates to do so on his behalf

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

with a certificate signed by him stating that he had examined the documents and adding what is necessary. But where the latter course is followed, the Head of the Department is not absolved from the obligation of appearing in person and satisfying the Court that the objection taken by him is vaild. He can be required by the Court either to give an affidavit or make a statement on oath; the Court is also entitled to put any question to him for satisfying itself that the privilege has been validly claimed, though the Court is not entitled to inspect the document or to put such questions as would directly or indirectly reveal its contents. Within these narrow limits the Court has full right to hold an inquiry and pronounce upon the validity or otherwise of the objection. Kapur, J. agreed generally with the conclusions and reasons of Khosla, J., though he also added his own opinion and Soni, J., after adding his own views, also agreed with Khosla, J.

In the light of the test laid down by the Full Bench I will now deal with documents which concern us in this case. I propose first to take up the documents at serial Nos. 4, 5 and 6, which are said to be the orders passed by the Pepsu Government, on 28th September, 1955, 8th March, 1956 and 11th August, 1956; respectively. The objection raised by Dewan Chetan Dass on behalf of the State, in short, is that it is open to the Government to pass interim orders on a particular matter, and till the final order is passed on such matter, the interim or tenative orders are the 'affairs of State' within the contemplation of section 123, Indian Evidence Act, as construed by the Full Bench decision in the case of *Governor-General in Council* v. *Haji Peer Mohammad Khuda Bakhsh and others* (1). He further submits that

(1) A.I.R. 1950 E.P. 228

the final order must be the one which the Government itself considers to be final and as such conveys to the person concerned. He has developed his argument by submitting that at three different stages Sodhi Sukhdev Singh's representations were considered by the Pepsu Cabinet and they came to certain tentative decisions, but these tentative decisions are merely proceedings of the Cabinet, which, being the unpublished records of the affairs of State, fall within the purview of section 123, Indian Evidence Act, and thus protected or privileged from production in Court. The affidavit by the Chief Secretary, when he says that the disclosure of these documents is prejudicial to the public interest, is, so argues the counsel, the last word on the point and the Court must treat his opinion to be conclusive and binding. In support of his contention the learned counsel has contended that the expression "affairs of State" has no magic about it and that whichever matter is officially dealt with by the State would be an "affair of State."

In my view this submission on behalf of the respondent cannot be upheld in face of the ratio of the Full Bench decision cited above which has been conceded by the counsel to represent the correct legal position. In order to amount to an "affairs of State" as used in section 123, Indian Evidence Act, the matter in question must, therefore, be of a public nature in which the State is concerned and also the disclosure of which will be prejudicial to the public interest or injurious to national defence or detrimental to good diplomatic relations. It is not claimed—and indeed it is hardly open to so claim—that the matter with which we are concerned falls within either of the last two categories, as it can by no means be considered to be related to national or military defence

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

or diplomatic relations or international politics. The only ground on which the counsel for the respondent has sought to support his objection is that the disclosure will be prejudicial to public interest. This question, as the passage cited above from the Full Bench judgment shows, has clearly to be decided by the Court which has a right and is indeed under a duty to satisfy itself that the document does in fact relate to "affairs of State". The decision of the Head of the Department, which is to be considerd conclusive, is the decision to withhold the permission to produce the document in his discretion after the Court has determined that it does actually relate to 'affairs of State'. It is within the peculiar province of the Court to carefully consider and determine that the document in question does in fact relate to 'affairs of State' before conceding to the Department concerned, what in effect amounts to a general sweeping power wholly to suppress, from every source of facts, what may at times be the most vital and conclusive piece of evidence, on the mere unexaminable opinion of an officer as to what he considers to be prejudicial to public interest. While the Courts in this Republic should never be hesitant in preventing improper disclosure of matters, truly injurious to the vital public interest, it is also of obvious importance to ensure generally that claims of privilege by the State—particularly in litigation involving possible liability of the State are not used unnecessarily, in bureaucratic routine, even though apparently in good faith, to the detriment of the vital need of the Courts to have the truth put before them. It is for this reason that in this country the Courts have an initial obligation imposed on them in public interest to determine that the documents in respect of which privilege is claimed do actually relate to 'affairs of State' and then to leave it to the Head of the

Department concerned to apply his mind in deciding whether or not to withhold permission to their production. To sustain the argument advanced by the respondent would virtually amount to abdication by the Court of its power and function in favour of the Head of the Department and refusal to perform the duty imposed on it to itself adjudicate and determine whether or not the document in question relates to 'affairs of State'. This in my humble opinion is a wholly inadmissible contention and I unhesitatingly repel it.

In the affidavit of Shri E. N. Mangat Rai, dated 19th May, 1959 (attested on 21st May, 1959), it is stated that against the order of removal Sodhi Sukhdev Singh, submitted a representation, dated 18th May, 1955, which was considered by the Council of Ministers of the erstwhile Pepsu State, the President's rule in the meantime having come to an end. This representation, along with the relevant records was placed before the Council of Ministers on 28th Sepember, 1955, and the views of the Cabinet were expressed in the form of a resolution on the matter and advice of the Public Service Commission was invited. This representation was once again considered by the Council of Ministers on 8th March, 1956, on the receipt of the advice of the Public Service Commission and views expressed by the Cabinet were recorded. Again, on 11th August, 1956, the merits of the representation were gone into by the Council of Ministers with the result that the representation did not find favour and it was ultimately resolved that the order of removal should stand, but that Sodhi Sukhdev Singh might be re-employed on some suitable post. This decision, the deponent states, was communicated to Sodhi Sukhdev Singh,—*vide* Home Department Communication No. H.D/1(74) A/56. dated 18th August,

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

1956. It is then deposed that according to the administrative policy and the Rules of Business made by the Government of erstwhile Pepsu State, all matters pertaining to the affairs of State and requiring consideration of the Council of Ministers were placed before it and examined in a secret and confidential manner. The case of Sodhi Sukhdev Singh, arising out of his representation was one of such matters and was considered on all the occasions stated above in the same manner. The deponent proceeds to justify the privilege claimed by making a reference to the Constitution of India, according to which maintenance of efficient public services and their integrity consistent with the rules of conduct is described to be one of the primary concerns of the Government and, as such, constituting an affair of State. It is then stated that, as in all other cases of disciplinary action against public servants, it would be against the policy of the Government as much as the proper functioning of the public services to disclose the deliberations carried on by the Council of Ministers from time to time and the views expressed by it on Sodhi Sukhdev Singh's representation ; the disclosure of the deliberations and views expressed by the Council of Ministers from time to time until final decision is taken, according to this affidavit, would not only be against the public interest, the Government policy and the effective and efficient control of services, but would also serve as a clog on the freedom of deliberations and expression of views by the Council of Ministers on cases involving disciplinary action. It is also stated that the resolutions of the Cabinet consequent upon the deliberations of the representation of Sodhi Sukhdev Singh, contained in the three documents in question are in the nature of advice and having regard to the rules of executive business framed by the Government of Pepsu State,

they do not acquire finality until an ultimate decision is taken by the Government and made public. This is practically all that the deponent has stated in order to persuade the Court to hold that these three documents relate to affairs of State and in order to justify the privilege claimed.

It has not been possible for me to spell out of this affidavit any relevant material which would induce us to give a finding that these documents do actually relate to any 'affairs of State' as defined in the aforesaid Full Bench decision. The afidavit obviously does not suggest that the disclosure of these documents would be injurious to national defence or detrimental to good diplomatic relations. An attempt, however, seems to have been made to show that their disclosure would be prejudicial to the public interest, and the only prejudice to the public interest, which I have been able to gather from the affidavit, appears to be that expressions of opinion by the Cabinet Ministers on two earlier occasions, i.e., 28th September, 1955, and 8th March, 1956, were intended to be secret and confidential and their disclosure would serve as a clog on the freedom of deliberations and expression of views; it is also added that it would run counter to the administrative policy and the Rules of Business made by the Government of the erstwhile Pepsu State. I regret it is not possible for me to hold these grounds to be sufficient to bring the documents within the purview of section 123, Indian Evidence Act, as construed by the aforesaid Full Bench decision of this Court.

This case brings out prominently an apparent conflict between what may be considered by the Chief Secretary to be public interest on one hand and the interests of due administration of justice

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

and of the parties to a particular litigation on the other. Naturally, therefore, this matter has called for a serious consideration by this Court. It is true that the State has a right and also a duty in certain circumstances to withhold documents from production in Courts; but it is equally undeniable that the Court is entitled, and indeed is duty-bound, to look with jealous care on any exercise of executive power which has the effect of overriding or ousting of jurisdiction of the Courts in matters which are *prima facie* peculiarly within their province. Where, therefore, a matter is asserted to relate to national defence or good diplomatic relations or public safety and law and order, the precedence or primacy of the public interest must readily be accepted. But where the public interest is only confined to the so-called administrative policy of the Executive Authorities, functioning under a system of representative government and removable officials, to keep their decisions secret and confidential then it must clearly and constantly be borne in mind that the requirement of due administration of justice is also considered in this Republic to be in the public interest in the highest degree. In a democratic State like ours, where Rule of Law is a basic guiding principle, when a justiciable dispute between the State and one of its citizens is taken to Court, opinion honestly expressed by the Ministers on the citizens representations relating to such dispute if otherwise relevant, should, in the absence of some special supervening military or international consideration like defence of the realm or diplomatic relations, or considerations of security or law and order, be made available to the Court which is called upon to adjudicate upon the dispute. In my opinion to withhold from the Court such documents, if otherwise relevant, and in the absence of supervening factors as mentioned

above, may itself prove highly prejudicial to the public interest as being calculated to obstruct, and to undermine the faith and confidence of the citizens in the efficient, impartial and due administration of justice. I must confess that I have not been able to trace any cogent and convincing reason for holding that these three documents in fact relate to 'affairs of State' within the rule laid down by the Full Bench.

An alleged administrative policy to treat the contents of these documents to be secret or confidential, in my view, hardly affords a sufficient grounds for bringing them within the category of 'affairs of State' ; nor does the fear of the Head of the Department that the disclosure of the opinions of the Cabinet would serve as a clog on the freedom of deliberations and expression of views. Indeed it is not easy for me to understand how the disclosure of the opinion of the Cabinet in the present case can possibly deter them from frankly and freely expressing their views in their deliberations in future. Merely because the public functionaries, who are expected to function according to law, feel restive when their acts are lawfully and within permissible limits scrutinised by the Courts to see whether they have acted beyond the power vested in them by law, can by itself in my opinion rarely—if at all provide a justifiable ground for claiming privilege so as to keep their activities secret and to withhold them from Courts and thus to hinder the due administration of justice. Secrecy in such common routine of business can seldom be legitimately desired. particularly in our system of government. Indeed to concede to the documents in question a sacrosanct secrecy in a Court of justice may well tend to give rise to a feeling that investigation into facts is being obstructed as it might reveal a liability. The

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

submission that the opinion of the Cabinet is a confidential advice and, therefore, privileged, need not detain us as even the counsel did not seriously pursue the matter and beyond a bare assertion he did not choose to develop or press the argument by even showing as to whom this confidential advice was given by the Cabinet. It is also difficult to appreciate as to how the opinions, dated 28th September, 1955, and 8th March, 1956, alone are confidential advices and not the final opinion of the Cabinet actually conveyed to the petitioner. With respect to these three documents, therefore, the order of the learned Subordinate Judge deserves to be set aside and the privilege claimed by the Department disallowed.

Coming now to the documents at serial numbers 1 and 2, which are said to virtually constitute one document, namely the original recommendation made by S.B.S. Teja Singh ex-Chief Justice of the erstwhile Pepsu High Court, I think these documents do fall within the category of affairs of State. When an investigation is held into the the misconduct of a Government servant and the Head of the Department makes some observations in the course of such investigation, disclosure thereof, might well be prejudicial to the public interest. If, therefore, the Head of the Department after consideraing the various aspects in his discretion withholds permission to its production in Court, the latter should, generally speaking accept it. I trust that the Head of the Department while deciding to withhold its production in Court has duly considered that efficient and impartial dispensation of justice is as much in the public interest as proper and just investigation into the misconduct of Government servants. The privilege with respect to these two documents is, therefore, upheld.

With respect to the documents at serial numbers 7 and 8 also, I would be inclined to uphold the order of the learned Subordinate Judge. The document at serial number 7 appears to be a memorandum prepared by the Cabinet Secretariat for the purposes of consideration of the case by the Cabinet. Such office notings, in my view, can legitimately be held to relate to affairs of State and thus privileged and protected, if the Head of the Department chooses to withhold their production. The document at serial number 8, which is the original report of Pandit Piara Lal, A.S.P., C.I.D., regarding his and Dewan Chetan Dass' interview with S.B.S. Teja Singh ex-Chief Justice, may also be a privileged document, because communications and discussions, even though recorded in writing, between the investigation Department and the Head of the Department with respect to the investigation into the alleged misconduct of the Departmental employees can also be considered to relate to affairs of State in respect of which the Departmental Head is competent to claim privilege. These documents and documents at serial numbers 1 and 2 already dealt with for the purposes of privilege fall in the same category.

In so far as the document at serial number 3 is concerned, in my opinion the Public Service Commission has to give its opinion on the facts stated to it by the Government concerned, and I have not been able to appreciate how disclosure of its opinion can possibly be prejudicial to the public interest. The counsel for the State has contended that the opinion of the Public Service Commission is that of an expert body and its disclosure is, therefore, calculated to prejudicially affect public interest. In the affidavit sworn by the Chief Secretary on 16th April, 1959, claiming privilege with respect to this document, it is stated that

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

the advice of the Public Service Commission was sought by the Council of Ministers in confidence and the same was tendered by the Commission in confidence; the document containing the advice is also marked "confidential". A reference is then made to the consideration of maintenance of efficient public services and their integrity and it is stated that the advice tendered by the Public Service Commission on disciplinary matters referred to it are unpublished official records relating to the affairs of State and are intended only for the use and guidance of the Government and consistent with the Government's policy the advice is kept secret. It is also stated that the said advice reproduces the views of the Cabinet expressed on 28th September, 1955, with respect to which also privilege has been claimed by a separate affidavit. Administrative policy of the Government and the proper functioning of the public services has also been relied on in support of the privilege with respect to this advice. After describing the views of the Commission to be advisory in character, which may or may not be acted upon. it is also stated that the disclosure would not only be against Government policy and the effective control of services, but will serve as a check upon the freedom of expression of views by the Commission in respect of cases relating to public services and involving disciplinary action. The advice being in official confidence, it is asserted that it would be against public interest to disclose its contents.

The Public Service Commission is a statutory body created in pursuance of Article 315 of the Constitution. This Commission can be consulted on all disciplinary matters affecting a person serving under the Government of a State in a civil capacity, including memorials or petitions relating

to such matters. It need hardly be stated that certain rights and privileges have been conferred by our Constitution on Government servants, and disputes with respect to dismissal, etc., to a considerable extent are, generally speaking, justiciable in Courts of law. It is, therefore, difficult for me to hold, on the affidavit which has been placed on this record, that disclosure of the opinion of the Public Service Commission on the representation by the petitioner can in any way prejudicially affect public interest. Mere assertion by the Chief Secretary is not enough for this Court to conclude that this opinion does relate to 'affairs of State'. I have already indicated that merely marking a document to be "confidential" and merely because the policy of the Government is to treat certain documents secret and confidential does not by itself necessarily lead to the conclusion that it does in fact relate to affairs of State within the rule adumbrated by the Full Bench decision mentioned above. I may here again observe that if a controversial issue arising between the State and a citizen can properly and lawfully be adjudicated upon in a Court of this Republic, then denial of justice to a single suitor is as much a public injury as the disclosure of any official record; when justice is at stake, the appeal to the necessities of the public interest should clearly be shown to the Court to be in fact prejudicial to the interest of the society. The State has not successfully done so with respect to this document. But then Dewan Chetan Dass has contended that this opinion of the Public Service Commission is wholly irrelavant because it is open to the State Government to disregard it. It may or may not be so, but the question of relevancy was not urged before the trial Court, and the impugned decision has not dealt with this aspect. It is thus not right for us to determine it at this stage. If it is

Sodhi Sukhdev Singh v. The State of Punjab

Dua, J.

open to the State to raise the point of relevancy, it is free to do so in the trial Court, and I have no doubt, the objection, if properly raised, would be duly considered and determined. Privilege claimed by the State with respect to this document must, however, in my opinion, be disallowed.

Before parting with this case, I must notice an objection raised on behalf of the respondent to the competency of this revision. It was contended that it is not a 'case' decided, and, therefore, the present revision under section 115 of the Code of Civil Procedure is incompetent. The objection in substance is similar to the one which was upheld by a Bench of five Judges of the Lahore High Court in *Lal Chand-Mangal Chand Sen* v. *Behari Lal—Mehr Chand* (1). This decision was, however, later reconsidered by a Bench of seven Judges of the same Court in *Bibi Gurdevi* v. *Chaudhri Mohammad Bakhsh and others* (2), and overruled. In *Gurdevi's case,* it has expressly been held that the word 'case' in section 115 of the Code of Civil Procedure has been intended by the Legislature to be wide enough to include interlocutory orders passed in a suit ; if they relate to some substantial question in controversy between the parties affecting their rights, and that this word does not always mean the whole suit. The preponderance of opinion of other High Courts also appears to accord with the view taken in this case.

This objection was also raised before the learned Single Judge who repelled it on the ground that a similar objection had also been overruled by the Full Bench of this Court in the *case of Haji Pir Mohammad Khuda Bakhsh.* In my view the impugned order is clearly covered by the ratio of

(1) I.L.R. 5 Lah. 288
(2) I.L.R. 1943 Lah. 257

Gurdevi's case and is not open to attack in these proceedings. I am, however, also of the view that independently of section 115 of the Code, this Court has ample power of interference with interlocutory orders in its supervisory jurisdiction under Article 227 of the Constitution. It may be noticed that by this Article the position which existed under section 107 of the Government of India Act, 1915, has been restored and the bar placed by the Government of India Act, 1935, on the power of the High Courts has been removed. In a fit and proper case, therefore, the High Court has full power under this Article to interfere with and scrutinise even an interlocutory order, if the justice of the case so demands.

Before concluding I may observe that the opinion of the Head of the Department withholding production of documents being unexaminable by the Court, it is expected that he would most carefully scrutinise the documents within the ambit of the privilege and after examining each document ask himself whether it is relevant to the plaintiff's case, whether the plaintiff's case would be hampered or impeded if it is not made available, and, if so, the probability of any harm being done to the public interest by disclosing it, is sufficient to outweight those considerations which are vital to the proper, efficient and impartial administration of justice. I have said this because in my opinion even if a document falls within the ambit of privilege, the Head of the Department might well decide not to claim the privilege and might agree to produce the relevant document in Court, for he is not bound necessarily to claim privilege merely because a document relates to 'affairs of State' ; it can only be claimed on settled principles and when secrecy is truly indispensable.

I may again repeat that we have only decided the question of privilege and the question of the

Sodhi Sukhdev Singh
v.
The State of Punjab

relevancy of these documents, if permissible under the law, is open to be raised by the Department in the trial Court.

Dua, J.

For the reasons given above I allow the revision petition and disallow the privilege with respect to the documents at serial numbers 3, 4, 5, and 6, but the order of the Court below with respect to the documents at serial numbers 1, 2, 7, and 8 is upheld. Costs of these proceedings would be costs in the suit. The parties are directed to appear before the trial Court on the 15th February, 1960.

Dulat, J.

DULAT, J.—I agree.

B. R. T.

REVISION CIVIL

Before A. N. Grover, J.

NIADRE,—*Petitioner.*

versus

NANNEH,—*Respondent.*

Civil Revision No. 369 of 1959.

1960

Jan., 19th

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Sections 13 and 15—Landlord obtaining consent decree for ejectment against tenant on the ground of reconstruction and restoration to tenant if no reconstruction takes place within specified time—Landlord while reconstructing converted residential permises into partly commercial and partly residential premises—Tenant of the portion converted into commercial premises—Whether entitled to restoration of possession or compensation—Statutory tenancy—Whether heritable—Application for restoration of possession by the quondam *tenant—Whether can be continued by his legal-representatives after his death.*

Held, that there is no express prohibition in the Delhi and Ajmer Rent Control Act, 1952, against rebuilding the premises or replacing the same by any building which may not be suitable at all for residential purposes. If a residential building is converted into partly commercial and partly residential building, the tenant of the portion converted into commercial premises is not entitled to restoration

REVISIONAL CIVIL

Before S. S Dulat and Inder Dev Dua, JJ.

SODHI SUKHDEV SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent*

Civil Revision No. 596 of 1959.

1960

Jan., 19th

Evidence Act (I of 1872)—Section 123—"affairs of State"—What amounts to—"Disclosure will be prejudicial to public interest"—Authority to determine—Whether the Court or the Head of the Department—Respective rights and duties of the Court and the State in such matters—Document containing observations of the Head of the Department in the course of investigation into the misconduct of a Government servant—Whether privileged—Office notings and memorandum prepared by Cabinet Secretariat for consideration by the Cabinet—Whether privileged—Inter-departmental Communications and Discussions—Whether privileged Public Service Commission—Opinion of—Whether privileged—Matters to be considered by the Head of the Department while claiming privilege indicated.

Held, that in order to amount to an "affair of State" as used in section 123, Indian Evidence Act, the matter in question must be of a public nature in which the State is concerned and also the disclosure of which will be prejudicial to the public interest or injurious to national defence or detrimental to good diplomatic relations.

Held, that the question that the disclosure will be prejudicial to the public interest has to be decided by the court which has a right and is indeed under a duty to satisfy itself that the document does in fact relate to "affairs of State". The decision of the Head of the Department, which is to be considered conclusive, is the decision to withhold the permission to produce the document in his discretion after the Court has determined that it does actually relate to 'affairs of State'. It is within the peculiar province of the Court to carefully consider and determine that the document in question does in fact relate to 'affairs of State' before conceding to the Department concerned, what in effect amounts to a general sweeping power wholly to suppress, from every source of facts, what may at times be the

most vital and conclusive piece of evidence, on the mere unexaminable opinion of an officer as to what he considers to be prejudicial to public interest. While the Courts in this Republic should never be hesitant in preventing improper disclosure of matters, truly injurious to the vital public interest, it is also of obvious importance to ensure generally that claims of privilege by the State—particularly in litigation involving possible liability of the State—are not used unnecessarily, in bureaucratic routine, even though apparently in good faith, to the detriment of the vital need of the Courts to have the truth put before them.

Held, that the claim of privilege on the ground that the disclosure will be prejudicial to the public interest inasmuch as the expressions of opinion by the Cabinet Minister on earlier occasions were intended to be secret and confidential and their disclosure would serve as a clog on the freedom of deliberations and expressions of views and would run counter to the administrative policy and the Rules of Business made by the Government is untenable. Merely because the public functionaries, who are expected to function according to law, feel restive when their acts are lawfully and within permissible limits scrutinised by the Courts to see whether they have acted beyond the power vested in them by law, can by itself rarely—if at all— provide a justifiable ground for claiming privilege so as to keep their activities secret and to withhold them from Courts and thus to hinder the due administration of justice. Secrecy in such common routine of business can seldom be legitimately desired, particularly in our system of Government.

Held, that it is true that the State has a right and also a duty in certain circumstances to withhold documents from production in Courts; but it is equally undeniable that the Court is entitled, and indeed is duty-bound, to look with jealous care on any exercise of executive power which has the effect of overriding or ousting of jurisdiction of the Courts in matters which are *prima facie* peculiarly within their province. Where, therefore, a matter is asserted to relate to national defence or good diplomatic relations or public safety and law and order, the precedence or primacy of the public interest must readily be accepted. But where the public interest is only confined to the so-called administrative policy of the Executive Authorities, functioning

under a system of representative Government and removable officials, to keep their decisions secret and confidential, then it must clearly and constantly be borne in mind that the requirement of due administration of justice is also considered in this Republic to be in the public interest in the highest degree. In a democratic State like ours, where Rule of Law is a basic guiding principle, when a justiciable dispute between the State and one of its citizens is taken to Court, opinion honestly expressed by the Ministers on the citizen's representations relating to such dispute if otherwise relevant, should, in the absence of some special supervening military or international consideration like defence of the realm or diplomatic relations, or considerations of security or law and order, be made available to the Courts which is called upon to adjudicate upon the dispute. To withhold from the Court such documents, if otherwise relevant, and in the absence of supervening factors as mentioned above, may itself prove highly prejudicial to the public interest as being calculated to obstruct, and to undermine the faith and confidence of the citizens in the efficient, impartial and due administration of justice.

Held, that when an investigation is held into the misconduct of a Government servant and the Head of the Department makes some observations in the course of such investigation, disclosure thereof might well be prejudicial to the public interest. If, therefore, the Head of the Department after considering the various aspects in his discretion withholds permission to its production in Court, the latter should, generally speaking, accept it. Similarly, the memorandum prepared by the Cabinet Secretariat for the purposes of consideration of the case by the Cabinet and office notings can legitimately be held to relate to affairs of State and thus privileged and protected, if the Head of the Department chooses to withhold their production. The communications and discussions, even though recorded in writing, between the investigation Department and the Head of the Department with respect to the investigation into the alleged misconduct of the Departmental employees can also be considered to relate to affairs of State in respect of which the Departmental Head is competent to claim privilege.

Held, that the disclosure of the opinion given by the Public Service Commission on the facts of a case stated to

it by the Government cannot be said to be prejudicial to the public interest and no privilege can be claimed in respect thereof.

Held, that the opinion of the Head of the Department withholding production of documents being unexaminable by the Court, it is expected that he would most carefully scrutinise the documents within the ambit of the privilege and after examining each document, ask himself whether it is relevant to the plaintiff's case, whether the plaintiff's case would be hampered or impeded if it is not made available, and, if so, the probability of any harm being done to the public interest by disclosing it, is sufficient to outweigh those considerations which are vital to the proper, efficient and impartial administration of justice. Even if a document falls within the ambit of privilege, the Head of the Department might well decide not to claim the privilege and might agree to produce the relevant document in Court, for he is not bound necessarily to claim privilege merely because a document relates to 'affaris of State'; it can only be claimed on settled principles and when secrecy is truly indispensable.

Petition under section 115, Civil Procedure Code, and Article 227 of the Constitution of India, for revision of the order of Shri M. R. Sikka, Sub-Judge, 1st Class, Patiala 'B', dated 27th August, 1959, accepting the defendant's claim of privilege in respect of all the documents except one, i.e., original report of Shri Nand Lal, S.I., C.I.D., of the open Departmental Enquiry Proceedings, .dated 17th October, 1952, in the case of Sodhi Sukhdev Singh, District and Sessions Judge.

Application for production of certain documents from the defendant and claim of privilege by the defendant in a suit of declaration and recovery of Rs. 62,700-6-0.

D. N. AWASTHY, for the Petitioner.

C. D. DEWAN, Assistant Advocate-General, for the Respondent.

JUDGMENT

DUA, J.—This case has been placed before us because a learned Single Judge of this Court, Dua, J.

Sodhi Sukhdev Singh
v.
The State of Punjab

before whom the matter came up in the first instance, considered it to be of importance and not free from difficulty.

Dua, J.

Sodhi Sukhdev Singh the plaintiff, who is now the petitioner in this Court, was a District and Sessions Judge in the erstwhile State of Pepsu. On the basis of certain alleged complaints a preliminary inquiry was ordered into his conduct as a result of which he was suspended by H. H. the Rajpramukh. After further inquiry he was removed from service on 7th April, 1953, after the necessary show-cause notice. His representation against his removel was rejected by the Government in March, 1956. In the present suit he has sought declaration that the order of his removal from service was illegal, *ultra vires* and in-operative and that he still continues to be in the service of the defendant (*i.e.*, the Government of Punjab). He has also claimed a sum of about Rs. 62,700.

During the course of the proceedings he summoned various documents from the defendant, some of which were produced, but in respect of the following documents privilege was claimed :—

(1) Original recommendation made by S.B.S. Teja Singh, on the preliminary inquiries held by Mr. Justice Gurnam Singh and Mr. Justice G. L. Chopra, on the basis of which suspension orders were passed by the Government.

(2) Original recommendation of S.B.S. Teja Singh, on the report of Mr. Justice Gurnam Singh and Mr. Justice G. L. Chopra, recommending the suspension of Sodhi Sukhdev Singh. (In fact these two documents are identical.).

(3) Report of the Public Service Commission on the representation, dated 18th May, 1955, of Sodhi Sukhdev Singh after the Pepsu Government decision, date 28th September, 1955.

(4) Original order passed by the Pepsu Government on 28th September, 1955 on the representation, dated 18th May, 1955 of Sodhi Sukhdev Singh.

(5) Original order passed by the Pepsu Government on 8th March. 1956, re-affirming 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 on the representation. dated 18th May, 1955 of Sodhi Sukhdev Singh.

(7) Memorandum prepared by the Home Department after the Pepsu Government had passed their order, dated 28th September, 1955 on Sodhi Sukhdev Singh's representation, dated 18th August, 1955, and re-affirmed the same decision on 8th March, 1956 along with Annexure 'A' and 'D' which are also memorandums prepared by the Cabinet Secretariat.

(8) Original report of Pandit Piara Lal. A.S.P., C.I.D., regarding his and Dewan Chetan Dass' interview with the former Chief Justice S.B.S. Teja Singht in connection with the evidence of Hari Krishan Ahalmad, Baldev Singh and

Sodhi Sukhdev Singh
v.
The State of Punjab

Rajinder Kumar, clerk, in connection with the departmental inquiry of Sodhi Sukhdev Singh.

Dua, J.

With respect to documents at serial Nos. 1 to 7 Shri E. N. Mangat Rai, Chief Secretary to Government, Punjab, has sworn affidavits that they constitute unpublished official records relating to the affairs of the State and that their disclosure would be detrimental to the public interest. With respect to the document at serial No. 8, the necessary affidavit has been sworn by Shri Waryam Singh, I.G. Police. Tht trial Court, after considering the arguments addressed to it, upheld the privilege, observing that the definite and self-contained affidavits of the two officers, based on adequate material, explained the details as to how the disclosure of the documents in question would be prejudicial to the public interest, and there being nothing on the record to show that these affidavits have been falsely or capriciously given by the Heads of the Departments they should be considered to be conclusive.

Before dealing with the documents, which are the subject-matter of the privilege, I may state that the correctness of the decision of a Ful Bench of this Court in *Governor-General in Council* v. *Peer Mohammad Khuda Bakhsh and others* (1), has not been questioned at the Bar and it is agreed that the rule laid down in the reported case is binding on us. This has made our task comparatively easier. In this judgment G. D. Khosla J., (as he then was) observed as follows at page 233:—

> "It is, therefore, sufficiently clear that the expression 'affairs of State' as used in section 123, Evidence Act, has a restricted meaning, and on the weight of

(1) A.I.R. 1950 E.P. 228

> authority both in England and in this Country, 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."

A little lower down at page 236 of the report the same learned Judge spoke as follows :—

> "I am, therefore, unable to accept the contention that the Court can hold no inquiry into the validity of the objection the moment privilege is claimed by the head of the department. It is nevertheless true that once the Court comes to the conclusion that the document relates to affairs of State the decision of the head of the department to give or withhold permission to its production must be accepted as final. On this point the Court cannot question the discretion of the head of the department."

While dealing with the question as to in what manner the Court is to hold the necessary inquiry when the inspection of the document is barred and in what form must the objection be taken, it has been stated in the reported case that the witness called upon to produce documents must appear in Court and bring the documents with him and then claim privilege. The Head of the Department is enjoined to examine the documents and consider whether privilege should or should not be claimed in respect of them. He may then either appear in person before the Court to raise the objection or direct one of his subordinates to do so on his behalf

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

with a certificate signed by him stating that he had examined the documents and adding what is necessary. But where the latter course is followed, the Head of the Department is not absolved from the obligation of appearing in person and satisfying the Court that the objection taken by him is vaild. He can be required by the Court either to give an affidavit or make a statement on oath; the Court is also entitled to put any question to him for satisfying itself that the privilege has been validly claimed, though the Court is not entitled to inspect the document or to put such questions as would directly or indirectly reveal its contents. Within these narrow limits the Court has full right to hold an inquiry and pronounce upon the validity or otherwise of the objection. Kapur, J. agreed generally with the conclusions and reasons of Khosla, J., though he also added his own opinion and Soni, J., after adding his own views, also agreed with Khosla, J.

In the light of the test laid down by the Full Bench I will now deal with documents which concern us in this case. I propose first to take up the documents at serial Nos. 4, 5 and 6, which are said to be the orders passed by the Pepsu Government, on 28th September, 1955, 8th March, 1956 and 11th August, 1956; respectively. The objection raised by Dewan Chetan Dass on behalf of the State, in short, is that it is open to the Government to pass interim orders on a particular matter, and till the final order is passed on such matter, the interim or tenative orders are the 'affairs of State' within the contemplation of section 123, Indian Evidence Act, as construed by the Full Bench decision in the case of *Governor-General in Council* v. *Haji Peer Mohammad Khuda Bakhsh and others* (1). He further submits that

(1) A.I.R. 1950 E.P. 228

the final order must be the one which the Government itself considers to be final and as such conveys to the person concerned. He has developed his argument by submitting that at three different stages Sodhi Sukhdev Singh's representations were considered by the Pepsu Cabinet and they came to certain tentative decisions, but these tentative decisions are merely proceedings of the Cabinet, which, being the unpublished records of the affairs of State, fall within the purview of section 123, Indian Evidence Act, and thus protected or privileged from production in Court. The affidavit by the Chief Secretary, when he says that the disclosure of these documents is prejudicial to the public interest, is, so argues the counsel, the last word on the point and the Court must treat his opinion to be conclusive and binding. In support of his contention the learned counsel has contended that the expression "affairs of State" has no magic about it and that whichever matter is officially dealt with by the State would be an "affair of State."

In my view this submission on behalf of the respondent cannot be upheld in face of the ratio of the Full Bench decision cited above which has been conceded by the counsel to represent the correct legal position. In order to amount to an "affairs of State" as used in section 123, Indian Evidence Act, the matter in question must, therefore, be of a public nature in which the State is concerned and also the disclosure of which will be prejudicial to the public interest or injurious to national defence or detrimental to good diplomatic relations. It is not claimed—and indeed it is hardly open to so claim—that the matter with which we are concerned falls within either of the last two categories, as it can by no means be considered to be related to national or military defence

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

or diplomatic relations or international politics. The only ground on which the counsel for the respondent has sought to support his objection is that the disclosure will be prejudicial to public interest. This question, as the passage cited above from the Full Bench judgment shows, has clearly to be decided by the Court which has a right and is indeed under a duty to satisfy itself that the document does in fact relate to "affairs of State". The decision of the Head of the Department, which is to be considerd conclusive, is the decision to withhold the permission to produce the document in his discretion after the Court has determined that it does actually relate to 'affairs of State'. It is within the peculiar province of the Court to carefully consider and determine that the document in question does in fact relate to 'affairs of State' before conceding to the Department concerned, what in effect amounts to a general sweeping power wholly to suppress, from every source of facts, what may at times be the most vital and conclusive piece of evidence, on the mere unexaminable opinion of an officer as to what he considers to be prejudicial to public interest. While the Courts in this Republic should never be hesitant in preventing improper disclosure of matters, truly injurious to the vital public interest, it is also of obvious importance to ensure generally that claims of privilege by the State—particularly in litigation involving possible liability of the State are not used unnecessarily, in bureaucratic routine, even though apparently in good faith, to the detriment of the vital need of the Courts to have the truth put before them. It is for this reason that in this country the Courts have an initial obligation imposed on them in public interest to determine that the documents in respect of which privilege is claimed do actually relate to 'affairs of State' and then to leave it to the Head of the

Department concerned to apply his mind in deciding whether or not to withhold permission to their production. To sustain the argument advanced by the respondent would virtually amount to abdication by the Court of its power and function in favour of the Head of the Department and refusal to perform the duty imposed on it to itself adjudicate and determine whether or not the document in question relates to 'affairs of State'. This in my humble opinion is a wholly inadmissible contention and I unhesitatingly repel it.

In the affidavit of Shri E. N. Mangat Rai, dated 19th May, 1959 (attested on 21st May, 1959), it is stated that against the order of removal Sodhi Sukhdev Singh, submitted a representation, dated 18th May, 1955, which was considered by the Council of Ministers of the erstwhile Pepsu State, the President's rule in the meantime having come to an end. This representation, along with the relevant records was placed before the Council of Ministers on 28th Sepember, 1955, and the views of the Cabinet were expressed in the form of a resolution on the matter and advice of the Public Service Commission was invited. This representation was once again considered by the Council of Ministers on 8th March, 1956, on the receipt of the advice of the Public Service Commission and views expressed by the Cabinet were recorded. Again, on 11th August, 1956, the merits of the representation were gone into by the Council of Ministers with the result that the representation did not find favour and it was ultimately resolved that the order of removal should stand, but that Sodhi Sukhdev Singh might be re-employed on some suitable post. This decision, the deponent states, was communicated to Sodhi Sukhdev Singh,—*vide* Home Department Communication No. H.D/1(74) A/56. dated 18th August,

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

1956. It is then deposed that according to the administrative policy and the Rules of Business made by the Government of erstwhile Pepsu State, all matters pertaining to the affairs of State and requiring consideration of the Council of Ministers were placed before it and examined in a secret and confidential manner. The case of Sodhi Sukhdev Singh, arising out of his representation was one of such matters and was considered on all the occasions stated above in the same manner. The deponent proceeds to justify the privilege claimed by making a reference to the Constitution of India, according to which maintenance of efficient public services and their integrity consistent with the rules of conduct is described to be one of the primary concerns of the Government and, as such, constituting an affair of State. It is then stated that, as in all other cases of disciplinary action against public servants, it would be against the policy of the Government as much as the proper functioning of the public services to disclose the deliberations carried on by the Council of Ministers from time to time and the views expressed by it on Sodhi Sukhdev Singh's representation ; the disclosure of the deliberations and views expressed by the Council of Ministers from time to time until final decision is taken, according to this affidavit, would not only be against the public interest, the Government policy and the effective and efficient control of services, but would also serve as a clog on the freedom of deliberations and expression of views by the Council of Ministers on cases involving disciplinary action. It is also stated that the resolutions of the Cabinet consequent upon the deliberations of the representation of Sodhi Sukhdev Singh, contained in the three documents in question are in the nature of advice and having regard to the rules of executive business framed by the Government of Pepsu State,

they do not acquire finality until an ultimate decision is taken by the Government and made public. This is practically all that the deponent has stated in order to persuade the Court to hold that these three documents relate to affairs of State and in order to justify the privilege claimed.

It has not been possible for me to spell out of this affidavit any relevant material which would induce us to give a finding that these documents do actually relate to any 'affairs of State' as defined in the aforesaid Full Bench decision. The afidavit obviously does not suggest that the disclosure of these documents would be injurious to national defence or detrimental to good diplomatic relations. An attempt, however, seems to have been made to show that their disclosure would be prejudicial to the public interest, and the only prejudice to the public interest, which I have been able to gather from the affidavit, appears to be that expressions of opinion by the Cabinet Ministers on two earlier occasions, i.e., 28th September, 1955, and 8th March, 1956, were intended to be secret and confidential and their disclosure would serve as a clog on the freedom of deliberations and expression of views; it is also added that it would run counter to the administrative policy and the Rules of Business made by the Government of the erstwhile Pepsu State. I regret it is not possible for me to hold these grounds to be sufficient to bring the documents within the purview of section 123, Indian Evidence Act, as construed by the aforesaid Full Bench decision of this Court.

This case brings out prominently an apparent conflict between what may be considered by the Chief Secretary to be public interest on one hand and the interests of due administration of justice

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

and of the parties to a particular litigation on the other. Naturally, therefore, this matter has called for a serious consideration by this Court. It is true that the State has a right and also a duty in certain circumstances to withhold documents from production in Courts; but it is equally undeniable that the Court is entitled, and indeed is duty-bound, to look with jealous care on any exercise of executive power which has the effect of overriding or ousting of jurisdiction of the Courts in matters which are *prima facie* peculiarly within their province. Where, therefore, a matter is asserted to relate to national defence or good diplomatic relations or public safety and law and order, the precedence or primacy of the public interest must readily be accepted. But where the public interest is only confined to the so-called administrative policy of the Executive Authorities, functioning under a system of representative government and removable officials, to keep their decisions secret and confidential then it must clearly and constantly be borne in mind that the requirement of due administration of justice is also considered in this Republic to be in the public interest in the highest degree. In a democratic State like ours, where Rule of Law is a basic guiding principle, when a justiciable dispute between the State and one of its citizens is taken to Court, opinion honestly expressed by the Ministers on the citizens representations relating to such dispute if otherwise relevant, should, in the absence of some special supervening military or international consideration like defence of the realm or diplomatic relations, or considerations of security or law and order, be made available to the Court which is called upon to adjudicate upon the dispute. In my opinion to withhold from the Court such documents, if otherwise relevant, and in the absence of supervening factors as mentioned

above, may itself prove highly prejudicial to the public interest as being calculated to obstruct, and to undermine the faith and confidence of the citizens in the efficient, impartial and due administration of justice. I must confess that I have not been able to trace any cogent and convincing reason for holding that these three documents in fact relate to 'affairs of State' within the rule laid down by the Full Bench.

An alleged administrative policy to treat the contents of these documents to be secret or confidential, in my view, hardly affords a sufficient grounds for bringing them within the category of 'affairs of State' ; nor does the fear of the Head of the Department that the disclosure of the opinions of the Cabinet would serve as a clog on the freedom of deliberations and expression of views. Indeed it is not easy for me to understand how the disclosure of the opinion of the Cabinet in the present case can possibly deter them from frankly and freely expressing their views in their deliberations in future. Merely because the public functionaries, who are expected to function according to law, feel restive when their acts are lawfully and within permissible limits scrutinised by the Courts to see whether they have acted beyond the power vested in them by law, can by itself in my opinion rarely—if at all provide a justifiable ground for claiming privilege so as to keep their activities secret and to withhold them from Courts and thus to hinder the due administration of justice. Secrecy in such common routine of business can seldom be legitimately desired. particularly in our system of government. Indeed to concede to the documents in question a sacrosanct secrecy in a Court of justice may well tend to give rise to a feeling that investigation into facts is being obstructed as it might reveal a liability. The

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

submission that the opinion of the Cabinet is a confidential advice and, therefore, privileged, need not detain us as even the counsel did not seriously pursue the matter and beyond a bare assertion he did not choose to develop or press the argument by even showing as to whom this confidential advice was given by the Cabinet. It is also difficult to appreciate as to how the opinions, dated 28th September, 1955, and 8th March, 1956, alone are confidential advices and not the final opinion of the Cabinet actually conveyed to the petitioner. With respect to these three documents, therefore, the order of the learned Subordinate Judge deserves to be set aside and the privilege claimed by the Department disallowed.

Coming now to the documents at serial numbers 1 and 2, which are said to virtually constitute one document, namely the original recommendation made by S.B.S. Teja Singh ex-Chief Justice of the erstwhile Pepsu High Court, I think these documents do fall within the category of affairs of State. When an investigation is held into the the misconduct of a Government servant and the Head of the Department makes some observations in the course of such investigation, disclosure thereof, might well be prejudicial to the public interest. If, therefore, the Head of the Department after consideraing the various aspects in his discretion withholds permission to its production in Court, the latter should, generally speaking accept it. I trust that the Head of the Department while deciding to withhold its production in Court has duly considered that efficient and impartial dispensation of justice is as much in the public interest as proper and just investigation into the misconduct of Government servants. The privilege with respect to these two documents is, therefore, upheld.

With respect to the documents at serial numbers 7 and 8 also, I would be inclined to uphold the order of the learned Subordinate Judge. The document at serial number 7 appears to be a memorandum prepared by the Cabinet Secretariat for the purposes of consideration of the case by the Cabinet. Such office notings, in my view, can legitimately be held to relate to affairs of State and thus privileged and protected, if the Head of the Department chooses to withhold their production. The document at serial number 8, which is the original report of Pandit Piara Lal, A.S.P., C.I.D., regarding his and Dewan Chetan Dass' interview with S.B.S. Teja Singh ex-Chief Justice, may also be a privileged document, because communications and discussions, even though recorded in writing, between the investigation Department and the Head of the Department with respect to the investigation into the alleged misconduct of the Departmental employees can also be considered to relate to affairs of State in respect of which the Departmental Head is competent to claim privilege. These documents and documents at serial numbers 1 and 2 already dealt with for the purposes of privilege fall in the same category.

In so far as the document at serial number 3 is concerned, in my opinion the Public Service Commission has to give its opinion on the facts stated to it by the Government concerned, and I have not been able to appreciate how disclosure of its opinion can possibly be prejudicial to the public interest. The counsel for the State has contended that the opinion of the Public Service Commission is that of an expert body and its disclosure is, therefore, calculated to prejudicially affect public interest. In the affidavit sworn by the Chief Secretary on 16th April, 1959, claiming privilege with respect to this document, it is stated that

Sodhi Sukhdev Singh
v.
The State of Punjab

Dua, J.

the advice of the Public Service Commission was sought by the Council of Ministers in confidence and the same was tendered by the Commission in confidence; the document containing the advice is also marked "confidential". A reference is then made to the consideration of maintenance of efficient public services and their integrity and it is stated that the advice tendered by the Public Service Commission on disciplinary matters referred to it are unpublished official records relating to the affairs of State and are intended only for the use and guidance of the Government and consistent with the Government's policy the advice is kept secret. It is also stated that the said advice reproduces the views of the Cabinet expressed on 28th September, 1955, with respect to which also privilege has been claimed by a separate affidavit. Administrative policy of the Government and the proper functioning of the public services has also been relied on in support of the privilege with respect to this advice. After describing the views of the Commission to be advisory in character, which may or may not be acted upon. it is also stated that the disclosure would not only be against Government policy and the effective control of services, but will serve as a check upon the freedom of expression of views by the Commission in respect of cases relating to public services and involving disciplinary action. The advice being in official confidence, it is asserted that it would be against public interest to disclose its contents.

The Public Service Commission is a statutory body created in pursuance of Article 315 of the Constitution. This Commission can be consulted on all disciplinary matters affecting a person serving under the Government of a State in a civil capacity, including memorials or petitions relating

to such matters. It need hardly be stated that certain rights and privileges have been conferred by our Constitution on Government servants, and disputes with respect to dismissal, etc., to a considerable extent are, generally speaking, justiciable in Courts of law. It is, therefore, difficult for me to hold, on the affidavit which has been placed on this record, that disclosure of the opinion of the Public Service Commission on the representation by the petitioner can in any way prejudicially affect public interest. Mere assertion by the Chief Secretary is not enough for this Court to conclude that this opinion does relate to 'affairs of State'. I have already indicated that merely marking a document to be "confidential" and merely because the policy of the Government is to treat certain documents secret and confidential does not by itself necessarily lead to the conclusion that it does in fact relate to affairs of State within the rule adumbrated by the Full Bench decision mentioned above. I may here again observe that if a controversial issue arising between the State and a citizen can properly and lawfully be adjudicated upon in a Court of this Republic, then denial of justice to a single suitor is as much a public injury as the disclosure of any official record; when justice is at stake, the appeal to the necessities of the public interest should clearly be shown to the Court to be in fact prejudicial to the interest of the society. The State has not successfully done so with respect to this document. But then Dewan Chetan Dass has contended that this opinion of the Public Service Commission is wholly irrelavant because it is open to the State Government to disregard it. It may or may not be so, but the question of relevancy was not urged before the trial Court, and the impugned decision has not dealt with this aspect. It is thus not right for us to determine it at this stage. If it is

Sodhi Sukhdev Singh v. The State of Punjab

Dua, J.

open to the State to raise the point of relevancy, it is free to do so in the trial Court, and I have no doubt, the objection, if properly raised, would be duly considered and determined. Privilege claimed by the State with respect to this document must, however, in my opinion, be disallowed.

Before parting with this case, I must notice an objection raised on behalf of the respondent to the competency of this revision. It was contended that it is not a 'case' decided, and, therefore, the present revision under section 115 of the Code of Civil Procedure is incompetent. The objection in substance is similar to the one which was upheld by a Bench of five Judges of the Lahore High Court in *Lal Chand-Mangal Chand Sen* v. *Behari Lal—Mehr Chand* (1). This decision was, however, later reconsidered by a Bench of seven Judges of the same Court in *Bibi Gurdevi* v. *Chaudhri Mohammad Bakhsh and others* (2), and overruled. In *Gurdevi's case,* it has expressly been held that the word 'case' in section 115 of the Code of Civil Procedure has been intended by the Legislature to be wide enough to include interlocutory orders passed in a suit ; if they relate to some substantial question in controversy between the parties affecting their rights, and that this word does not always mean the whole suit. The preponderance of opinion of other High Courts also appears to accord with the view taken in this case.

This objection was also raised before the learned Single Judge who repelled it on the ground that a similar objection had also been overruled by the Full Bench of this Court in the *case of Haji Pir Mohammad Khuda Bakhsh.* In my view the impugned order is clearly covered by the ratio of

(1) I.L.R. 5 Lah. 288
(2) I.L.R. 1943 Lah. 257

Gurdevi's case and is not open to attack in these proceedings. I am, however, also of the view that independently of section 115 of the Code, this Court has ample power of interference with interlocutory orders in its supervisory jurisdiction under Article 227 of the Constitution. It may be noticed that by this Article the position which existed under section 107 of the Government of India Act, 1915, has been restored and the bar placed by the Government of India Act, 1935, on the power of the High Courts has been removed. In a fit and proper case, therefore, the High Court has full power under this Article to interfere with and scrutinise even an interlocutory order, if the justice of the case so demands.

Before concluding I may observe that the opinion of the Head of the Department withholding production of documents being unexaminable by the Court, it is expected that he would most carefully scrutinise the documents within the ambit of the privilege and after examining each document ask himself whether it is relevant to the plaintiff's case, whether the plaintiff's case would be hampered or impeded if it is not made available, and, if so, the probability of any harm being done to the public interest by disclosing it, is sufficient to outweight those considerations which are vital to the proper, efficient and impartial administration of justice. I have said this because in my opinion even if a document falls within the ambit of privilege, the Head of the Department might well decide not to claim the privilege and might agree to produce the relevant document in Court, for he is not bound necessarily to claim privilege merely because a document relates to 'affairs of State' ; it can only be claimed on settled principles and when secrecy is truly indispensable.

I may again repeat that we have only decided the question of privilege and the question of the

Sodhi Sukhdev Singh
v.
The State of Punjab

relevancy of these documents, if permissible under the law, is open to be raised by the Department in the trial Court.

Dua, J.

For the reasons given above I allow the revision petition and disallow the privilege with respect to the documents at serial numbers 3, 4, 5, and 6, but the order of the Court below with respect to the documents at serial numbers 1, 2, 7, and 8 is upheld. Costs of these proceedings would be costs in the suit. The parties are directed to appear before the trial Court on the 15th February, 1960.

Dulat, J.

DULAT, J.—I agree.

B. R. T.

REVISION CIVIL

Before A. N. Grover, J.

NIADRE,—*Petitioner.*

versus

NANNEH,—*Respondent.*

Civil Revision No. 369 of 1959.

1960

Jan., 19th

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Sections 13 and 15—Landlord obtaining consent decree for ejectment against tenant on the ground of reconstruction and restoration to tenant if no reconstruction takes place within specified time—Landlord while reconstructing converted residential permises into partly commercial and partly residential premises—Tenant of the portion converted into commercial premises—Whether entitled to restoration of possession or compensation—Statutory tenancy—Whether heritable—Application for restoration of possession by the quondam *tenant—Whether can be continued by his legal-representatives after his death.*

Held, that there is no express prohibition in the Delhi and Ajmer Rent Control Act, 1952, against rebuilding the premises or replacing the same by any building which may not be suitable at all for residential purposes. If a residential building is converted into partly commercial and partly residential building, the tenant of the portion converted into commercial premises is not entitled to restoration