

(1966) 10 AHC CK 0027
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1222 of 1962

Joti Prasad Sharma

APPELLANT

Vs

Additional Civil Judge, Dehradun and Others

RESPONDENT

Date of Decision : 25-10-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 123

Citation : AIR 1968 All 42

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : S.N. Misra, for the Appellant; S.C. Khare, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, J.—In a suit filed by the petitioner against the State of Uttar Pradesh for an injunction restraining it from realising an amount under a forest contract, the petitioner applied for inspection and production of certain documents in the possession of the State Government and its officers. In opposition to the application, the State claimed privilege in respect of the documents and two affidavits were filed before the trial court, one by the Conservator of Forests (Annexure 2 to the counter affidavit) and the other by the Chief Conservator of Forest (Annexure 3 to the counter affidavit). The application was rejected by the trial court by its order of March 17, 1962 (Annexure K to the writ petition) by the following order:

"17-3-62 283/C2

Affidavit filed by the defendant, along with this affidavit an application has been made on behalf of the defendant that the plaintiff be not allowed to inspect the file

A perusal of Section 123 of the Indian Evidence Act makes it clear that it is for

the Head of the Department to permit or not to permit giving in evidence any document which are unpublished official record relating to the affairs of the State. The affidavit filed today proves that the documents which are claimed as secret are unpublished official records relating to the affairs of the State. In view of the affidavit the documents cannot be tendered into evidence 282/C2 is therefore allowed."

2. The petitioner is aggrieved by the order and applies for certiorari

3. The petitioner contends that the trial court did not apply its mind to the application before it and merely accepted the affidavit in which it was claimed that the documents were unpublished official records relating to the affairs of the State. It is alleged that the trial court should have determined whether in fact upon the material before it the documents were of the class which could be said to relate to the affairs of the State. There is substance in the contention. The law on the point was laid down by the Supreme Court in *The State of Punjab Vs. Sodhi Sukhdev Singh*, .

The Supreme Court, after analysing Section 123 of the Evidence Act declared that while it was not open to the Court to hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question and that that was a matter for the authority concerned to decide, the Court was competent, and indeed was bound, to hold a preliminary enquiry and determine the validity of the objection to its production and that that necessarily involved an enquiry into the question as to whether the evidence related to an affair of the State u/s 123. It is clear that the trial court was bound to consider objectively whether the material before it justified the inference that the documents in question related to the affairs of the State. That was a matter into which the trial court was bound to enter and to arrive at its own decision. What documents can be said to relate to the affairs of the State was also discussed by the Supreme Court in the aforesaid case and after observing that the affairs of the State would ordinarily refer to matters of political or administrative character whose disclosure would affect the national defence or public security or good neighbourly relations, it further remarked.

"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."

It would, therefore seem that if the documents related to questions of public policy, they could be said to relate to the affairs of the State. Now, in the instant case all that the trial court had before it were the affidavits of the Chief

Conservator of Forests and the Conservator of Forests and those affidavits merely said that the file contained several letters written by the Head of the Department to the subordinate officers of the department and vice versa and between that department and other departments and they were, therefore unpublished official records and were secrets of the State. They further stated that the account books and audit reports were unpublished official records and were secrets of the State. It is difficult to say that these averments in the affidavits constitute material from which it can be inferred that the documents in question refer to affairs of the State. The averments merely came to this that there are several letters on the files which have been written by certain authorities to other authorities. Nothing is disclosed as to the character of the letters from which it can be inferred that they relate to affairs of the State. Moreover, the affidavits have not been made by the Secretary of the Department. The Supreme Court in the aforesaid case expressly pointed out that having regard to the seriousness of the question for determining whether in a given set of circumstances the claim to privilege should be upheld it was necessary that-

"the privilege should be claimed generally by the Minister in charge who is political head of the department concerned; if not, the Secretary of the department who is the departmental head should make the claim; and the claim should always be made in the form of an affidavit. When the affidavit is made by the Secretary the Court, may in a proper case, require an affidavit of the Minister himself. The affidavit should show that each document in question has been carefully read and considered, and the person making the affidavit is satisfied that its disclosure would lead to public injury. If there are a series of documents included in a file it should appear from the affidavit that each one of the documents, whose disclosure is objected to has been duly considered by the authority concerned"

4. It does not appear from the affidavits mentioned above that the several documents on the files were individually read and considered before the claim to privilege was made. It appears that the claim was made casually, and in my opinion the material before the trial court was inadequate for the purposes of sustaining the inference that the documents related to affairs of the State.

5. Considerable reliance has been placed by learned counsel for the respondents upon the supplementary counter affidavit of M. A. Quralshi, Secretary of the Forest Department, but there is nothing to show that the affidavit was filed before the trial court.

6. In the circumstances, the order of the trial court cannot be sustained.

7. An objection was raised by learned counsel for the respondents to the grant of relief upon this petition. It is pointed out that the petitioner should have allowed the suit to proceed to a decree and in case the suit was dismissed the petitioner could have proceeded in appeal and agitated this question in the appeal. Alternatively, it is said, the petitioner could have applied in revision u/s 115 of

the CPC against the order. The question whether relief should be refused on the ground that an alternative remedy exists is a matter resting in the discretion of the Court. It appears to me that the order impugned by the instant petition is ex facie bad. The trial court plainly has not exercised its jurisdiction in accordance with law. The objection raised on behalf of the respondents is rejected.

8. The petition is allowed. A writ in the nature of certiorari shall issue quashing the order dated March 17, 1962 made by the trial court. The trial court will now dispose of the application of the petitioner in accordance with law. The petitioner is entitled to his costs.