(1969) 01 DEL CK 0001

In the Delhi High Court

Case No : Civil Revision Appeal No. 351 of 1967

Reserve Bank of India APPELLANT

Vs

Sudershan Kumar Khanna and Another RESPONDENT

Date of Decision : 07-01-1969

Acts Referred:

Citation : (1970) 6 DLT 121 : (1969) ILR Delhi 460 Supp

Hon'ble Judges : T.V.R. Tatachari, J

Bench : Single Bench

Advocate : H.L. Anand, R.C. Verma, M.L. Lonial and M.L. Bajaj, for the Appellant;

Judgement

T.V.R. Tatachari, J.

(1) This judgment was, however, announced by Om Parkash, J.-Ed. This judgment will dispose of the two Civil Revision Petitions Nos. 35l and 353 of 1967 which were heard together, as the questions for determination in the two Revision Petitions were the same.

(2) The Petitioner in Civil Revision No. 351 of 1967 is the Reserve Bank of India, Department of Banking Operations and Development, Parliament Street, New Delhi-1. Respondent No. 1 is Sudershan Kumar Khanna, and respondent No. 2 is the Punjab Co-operative Bank Limited, Chandni Chowk, Delhi. Respondent No. 2 filed a suit No. 157 of 1965 in the Court of the Senior Subordinate Judge, Delhi, against respondent No.1 for recovery of Rs. 4,988.11 paise. Respondent No. 1 filed his written statement denying his liability and praying that the suit may be dismissed.

(3) The petitioner in Civil Revision No. 353 of 1967 is the Reserve Bank of India, Department of Banking Operations and Development, Parliament Street, New Delhi-1. Respondent No.1 is Jagdish Rai. Respondent No.2 is the Punjab and Kashmir Bank Limited, C-117, Moti Nagar, New Delhi (Chandni Chowk Branch). Respondent No. 2 filed a suit No. 142 of 1966, in the Court of the Senior

Subordinate Judge, Delhi, against respondent No. 1 for recovery of Rs. 3,272.60 paise. Respondent No.1 filed his written statement denying his liability and praying that the suit may be dismissed.

(4) During the pendency of the two suits, the respective defendants, S.K. Khanna and Jagdish Rai, summoned some documents from the Reserve Bank of India which was not a party to the suits. The documents originally asked for by the defendants in the two suits were "yearly inspection reports and certificates relating to the Punjab Co-operative Bank Limited, Chandni Chowk, Delhi, for the years 1959.60 to 63." It appears that when the matters came up before the Court on 21-11-1966, the requirements of the "Certificates" was withdrawn, and the Court adjourned the matters to 14-12-1966 and again to 20-1-1967 for production of the "Inspection reports" only. In the meantime, the Reserve Bank of India filed an application on 15-12-1966 supported by an affidavit of one K, Chakrapani, Deputy Chief Officer, Reserve Bank of India, Department of Banking Operations and Development, New Delhi, claiming privilege in respect of the aforesaid inspection reports, u/s 123 of the Indian Evidence Act. The defendants in the suits filed objections to the said claim contending, inter alia, thai K.S. Chakrapani, was not the Head of the Department, that the privilege could be claimed only by an affidavit of the Finance Minister or the Governor of the Reserve Bank of India, and that the inspection reports asked for by them were not unpublished official records relating to the affairs of State. Thereupon, the Reserve Bank of India filed an affidavit, dated 9-1-1967, of one Mohan Sakharam Nandkarni, Chief Officer (Banking Operations), Department of Banking Operations and Development, Reserve Bank of India, Bombay, in which it was stated that as Chief Officer (Banking Operations), Shri Nadkarni was in-charge of the general superintendence and direction of the affairs and business of the Department of Banking Operations and Development, Reserve Bank of India, Bombay, and that the inspection reports asked for by the defendants in the suits were un published official records relating to affairs of State in respect of which privilege could be claimed u/s 123 of the Indian Evidence Act. The defendants again filed their objections contending that Shri Nadkarni was not the Head of the Department, and was not, Therefore, competent to file an affidavit claiming privilege u/s 123, and that the inspection reports were not unpublished official records relating to affairs of State. The matters came up before the learned Subordinate Judge, 1st Class, Delhi, on 17-2-1967, and an Order was passed on that date. In that Order, the learned Subordinate Judge observed that Shri Nadkarni was not the Head of the Department as required u/s 123 of the Evidence Act, and that if the Reserve Bank of India wanted to claim a privilege, it could only be done by the Head of the Department. The learned Subordinate Judge allowed time to the Reserve Bank of India to procure the affidavit of a responsible Officer who could be termed as the Head of the Department for the purposes of Section 123 of the Evidence Act, and adjourned the matters.

(5) Thereafter, another affidavit of Shri Nadkarni, dated 16-3-67, was filed. In this affidavit, it was stated that as the Chief Officer of the Department of Banking

Operations and Development in the Reserve Bank of India, Shri Nadkarni was the Head of the Department within the meaning of Section 123, and that he could accordingly claim privilege in respect of the inspection reports relating to the Punjab Cooperative Bank Limited, Chandni Chowk, Delhi, for the years 1959-60 to 1963-64 asked for by the defendants. It was also stated that in view of Order of the Court, dated 17-2-67, all the relevant papers were placed before the Governor of the Reserve Bank of India, that the Governor had confirmed by his Order, dated 16-3-1967, the decision taken by the Chief Officer that the privilege should be claimed u/s 123 of the Evidence Act, and that the Governor had also authorised Shri Nadkarni to file the additional affidavit, dated 16-3-1967. A copy of the Order, dated 16-3-1967, passed by the Governor was attached to the said affidavit. In that Order, the Governor, Shri P.C. Bhattacharya, stated that he had gone through the papers in the case, that he confirmed thereby the decision taken by the Chief Officer, Department of Banking Operations and Development, to the effect that privilege u/s 123 of the Evidence Act should be claimed in the cases, and that he authorised the Chief Officer to file an affidavit in the Court to that effect. Thereafter, the matters come up before the learned Senior Subordinate Judge, 1st Class, who, after hearing the parties, passed an Order, dated 25-7-1967, observing, that as the Reserve Bank of India had not filed the affidavit of the Head of the Department, their claim of privilege could not be considered, that although sufficient time had already been allowed to the Reserve Bank of India to file an affidavit of the Head of the Department if it wanted to claim privilege, he would allow another opportunity to the Reserve Bank of India to file an affidavit of the Head of the Department within twenty-one days, and that if they failed to file the said affidavit within that time the claim of privilege would be deemed to have been rejected, and the Reserve Bank of India would be forced to file the documents summoned by the defendants. It is against that Order, passed separately in the two suits, that the present two Revision Petitions have been filed by the Reserve Bank of India.

(6) The learned Subordinate Judge did not record specific findings as to whether Shri Nadkarni was the Head of the Department, and as to whether the Governor of the Reserve Bank of India was the only authority who could be regarded as the Head of the Department, and as such competent to give the affidavit for the purposes of Section 123 of the Evidence Act.

(7) The question for determination in these Revision Petitions as to whether Shri Nadkarni was the Head of the Department of ^ Banking Operations and Developments of the Reserve Bank of India at New Delhi. After hearing the counsel for both the parties for some time, I considered that the petitioner, Reserve Bank of India, should file an affidavit setting out the constitution of the various Departments and the hierarchy of Officers in the Reserve Bank of India, particularly the Officers of Branches in New Delhi, and I passed an Order accordingly on 12-9-1968. In pursuance of that Order, the petitioner-bank filed an affidavit of one Sankara Narayana Swamy, dated 21-9-1968. Shri Sankara Narayana Swamy is stated to be the Personnel Manager, Department of

Administration and Personnel Central Officer of the Reserve Bank of India. It was stated in the affidavit that by reason of Regulation 19 of the Reserve Bank of India General Regulations read with Regulation 18 thereof and the Notification, dated 17-12-1965, issued there-under, Sankara Narayana Swami was competent to affirm the affidavit. Shri M.L. Lonial, the learned counsel for respondent No.1, raised an objection that the affidavit was no affidavit in the eye of law and is contrary to the requirements of law and the instructions given in Chapter 12-B of the Rules and Orders of the High Court, Volume Iv, as the deponent did not state in the affidavit what matters were true to his knowledge and what on information derived from the records and believed by him to be true as required by law. In the verification, at the end of it was stated that the contents of the affidavit were true to the the deponent''s knowledge and information as derived from the records and that he believed the same to be true. It is true that the deponent did not state separately what matters set out in the affidavit were true to his knowledge and what matters were true according to the information derived from the records, and, Therefore, the affidavit cannot be said to have been verified as required by law. But even though it may not be regarded as an affidavit in the strict sense of the term, the document signed by Shri Sankara Narayana Swami can be regarded as a statement made by him in writing to the Court as a responsible Officer of the Reserve Bank of India regarding the constitution of the various Departments and the hierarchy of Officers in the Reserve Bank of India. I see no reason with certain matters allocated to it and controls the administration of such matters at the local Officers and Branches. The affidavit goes on to set out the various cadres of Officers functioning within each Department below the Head of the Department .It is further stated in the affidavit that in the Delhi Office there are also Wings of the other Central Office Departments, viz. the Department of Banking Operations and Development in-charge of a Deputy Chief Officers the Exchange Control Department headed by a Deputy Controller, the Agricultural Credit Department headed by a Deputy Chief Officer, the Industrial Finance Department headed by a Deputy Chief Officer designated at present as Officer-in-charge of the Industrial Finance Department. Similarly in Bombay there are Wings of the Central Office Departments. In paragraph 9 of the affidavit it was affirmed that the local Wings of the Central Office Departments situate at different places are subject to the control of the Head of the concerned Department in the Central Office that the Department of Banking Operations and Department, New Delhi, is controlled by the Department of Banking Operations and Development in Central Office and that the Chief Officer (Operations) is in overall charge of all the local Wings of that Department at various Offices and Branches.

(8) It was next stated in the affidavit that till 1950 the function of supervision of Banks entrusted to the Reserve Bank, was being discharged by a Department called the Department of Banking Operations, that in 1950, a Department of Banking Development was created with the object of giving concentrated attention to the extension of Banking facilities to semi-urban areas and to

problems of rural finance, that in 1965 these two Departments, viz, the Department of Banking Operations and the Department of Banking Development were merged into one Department called the Department of Banking Operations and Development and two Chief Officers were appointed in the new Department of Banking Operations and Development, that the senior of the two Chief Officers was designated as Chief Officer (Banking Operations) of that Department and the other as Chief Officer (Inspection), that by Central Office Order No. Staff. No. C.621/23/ (b)- 64/65, dated 1st April 1965, Shri M. S. Nadkarni was to act as Chief Officer (Banking Operations) and Shri A. R. Thanawala was to act as Chief Officer (Inspection), a copy of which has been filed as Annexure ''A'' to the affidavit, and that Shri M.S. Nadkarni was thus and continues to be the overall administrative Head of the entire Department of Banking Operations and Development.

(9) Thus, it appears from the averments in the affidavit that the Reserve Bank has several Departments, one of them being the Department of Banking Operations and Development and each of the Department has an administrative Head. At the apex of the entire Organisation, there is the Governor of the Reserve Bank having the function of an overall supervision of the Reserve Bank''s work. It is clear from the affidavit that Shri M. S. Nadkarni was and continues to be the overall administrative Head of the entire Department of Banking Operations and Development, and the affidavit, dated 9-1-1967, claiming privilege in the present cases was made by him.

(10) Section 123 of the Evidence Act provides that unpublished official records relating to affairs of the State shall be permitted to be given in evidence only with the permission of the Officer at the Head of the Department concerned. As pointed out above. Reserve Bank of India has several Departments and there is an Officer at the Head of each Department, and in a given case, it is the Officer at the Head of the Department concerned that should claim the privilege u/s 123. The words "Department concerned" in Section 123 are significant. Where there are several Departments in an Organisation, the said words in the Section refer to the Officer at the Head of the particular Department concerned. The Governor of the Reserve Bank of India is at the apex and in overall charge of all the Departments of the Reserve Bank of India, though, as such he is also, in one sense, the Head of each of the various Departments. It, Therefore follows that it would be incorrect to say that the Governor of the Reserve Bank of India is "the Officer at the Head of the Department concerned" for the purposes of claiming privilege u/s 123 of the Indian Evidence Act. Thus in view of the constitution and the set up of the various Departments viz. an Officer at the Head of each Department and the Governor at the apex of the entire Organisation it is the said Officer at the Head of the Department concerned that has to claim the privilege u/ s 123, and not the Governor who is, as it were an overall head of all the Departments of the Reserve Bank of India. As already stated above, Shri M. S. Nadkarni was the administrative Head of the entire Department of Banking Operations and Development of the Reserve Bank of India, and he was Therefore

the proper person to make the claim of privilege u/s 123 by an affidavit. The lower Court was, Therefore, in error in considering that the Reserve Bank of India did not file an affidavit of an Officer at the Head of the Department. Shri M. S. Nadkarni was the Officer at the Head of the Department concerned at the relevant time, and he was quite competent to make the affidavit, dated 9-1-1967, filed on behalf of the Reserve Bank of India.

(11) Shri Lonial, the learned counsel for the respondents-defendants, referred to the decision of the Supreme Court in Union of India v. Indra Deo Khnwr (1) and contended that the Officer who gives an affidavit claiming privilege u/s 123 of the Indian Evidence Act should be one who is officially designated as Head of the Department concerned, and that since Shri Nadkarni was officially designated only as Chief Officer and not as the Head of the Department he was not competent to give an affidavit claiming privilege. The said contention has no force. Section 123 of the Evidence Act merely refers to "an Officer at the Head of the Department concerned". The said words used in the Section are wide enough to include an Officer who officially functions as the Head of the entire Departments concerned, though he may not be actually designated officially as the Head of the Department. It is not the form, but the substance that is material. In my opinion, it is not necessary for the purposes of Section 123, that the Officer claiming privilege should be one who has been officially designated as the Head of the Department. It is sufficient if he is one who officially functions as the Head of the entire Department concerned though not formally designated as Head of the Department. The decision of the Supreme Court referred to by Shri Lonial does not lay down that the Officer claiming privilege u/s 123 should be one who has been designated as Head of the Department concerned. In that case, the Officer who claimed privilege was one Shri B.M. Kaul, Chief Personnel Officer North- Eastern Railway, Gorakhpur. On a consideration of the relevant Notification and Rules the Supreme Court came to the conclusion in paragraph 14 of the Judgment at page 1120, that,

" THE status of Shri Kaul, Chief Personnel Officer, as Head of Department under the Notification, dated April 2, 1959, and the entry at Serial number 18 of appendix 38-R-11 do not make him Head of Department for all purposes, but make him Head of Department for the purpose of the Rules in Chapter Xxii and in that case only when there is nothing repugnant in the context or subject of the rule concerned."

(12) The Supreme Court Therefore, held that,

under section "The Chief Personnel Officer is not given the status of a Head of Department for the purpose of claiming the privilege 123 of the Evidence Act."

(13) Thus, in the case before the Supreme Court the Officer who claimed privilege was the Chief Personnel Officer, North- Eastern Railway, and who was designated as Head of Department only for certain specified purposes. He was not an Officer who officially functioned as the Head of the entire Department,

and he was recognised as Head of Department only for certain specified purposes. That was why the Supreme Court decided in that case that he was not given the status of a Head of Department for the purpose of claiming privilege u/s 123 of the Evidence Act, and that he was Therefore not competent to make the affidavit claiming privilege u/s 123 of the Evidence Act. This was clearly stated by the Supreme Court again in paragraph 15 of the judgment as under :-

" THE Chief Personnel Officer is not Head of the Department for purpose of Section 123 of the Evidence Act as he has been conferred the status of "Head of Department" for particular purposes only and those purposes do not include the purpose of claiming privilege u/s 123 of the Evidence Act."

(14) In the present case, the local Wings of the Central Office Departments situate at different places are subject to the control of the Head of the concerned Department in the Central Offices. The Department of Banking Operations and Development, New Delhi, is controlled by the Department of Banking Operations and Development in the Central Office, and Shri Nadkarni, as the Chief Officer (Operations) is in overall charge of all the local Wings of that Department at various Offices and Branches. Thus, he was and continues to be the overall administrative Head of the entire Department of Banking Operations and Development of the Reserve Bank of India. He has, Therefore, to be held as an Officer at the Head of the Department concerned viz. the entire Department of Banking Operations and Development of the Reserve Bank of India, within the meaning of Section 123 of the Indian Evidence Act.

(15) It may also be stated that in the present cases, the Governor of the Reserve Bank of India, as stated in his Order, dated 7-3-1967, had gone through the papers in the cases and confirmed the decision taken by Shri Nadkarni that privilege u/s 123of the Evidence Act should be claimed in the present cases. This, however, is not material in the view taken by me that Shri Nadkarni was quite competent to claim the privilege u/s 123.

(16) It was also the contention of the Reserve Bank of India that the inspection reports summoned by the defendants are unpublished official records relating to affairs of the State. This proposition was contested by the defendants. The learned Subordinate Judge, in the view taken by him that the Reserve Bank of India had not filed an affidavit of the Head of the Department did not consider the aforesaid contention. The learned counsel for both the parties desired that this contention may be decided by me in these Revision Petitions, and advanced their arguments regarding the same. At one stage, Shri Lonial, the learned counsel for the respondents-defendants, stated that the defendants would be content with the production of only those portions of the inspection reports in which the accounts of the defendants were considered and commented upon. Shri Anand, the learned counsel for the Reserve Bank of India, took time for getting the necessary instructions from his client, and ultimately submitted that the Reserve Bank claims privilege even in respect of the aforesaid portions of the inspection reports. Having regard to the scope of the preliminary enquiry that

has to be made by a Court in deciding the question of privilege, as pointed out by the Supreme Court in State of Punjab v. Sodhi Sukhdev Singh, (2) I consider that it would be more appropriate and proper if the said question of privilege is considered and decided upon by the trial court.

(17) For the foregoing reasons, I allow the Civil Revision Petitions, and set aside the Order''s of the learned Subordinate Judge, dated, 25-7-1967, in the two suits. The learned Subordinate Judge shall now take up the applications made by the defendants for summoning the inspection reports and decide the question as to whether the said inspection reports are unpublished official records relating to affairs of State within the meaning of Section 123 of the Evidence Act on the basis of the affidavits filed by Shri Nadkarni claiming privilege u/s 123. In the circumstances of the case, I direct that the parties shall bear their own costs in the Revision Petitions.