

(1971) 01 KL CK 0004
In the High Court Of Kerala
Case No : C.R.P. No. 1301 of 1970

State	Vs	APPELLANT
The Midland Rubber and Produce Co.		RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Evidence Act, 1872 — Section 124

Citation : AIR 1971 Ker 228 : (1971) KLJ 278

Hon'ble Judges : K. Sadasivan, J

Bench : Single Bench

Advocate : P.N. Rajan, Govt. Pleader, for the Appellant; Menon and Pai (P.K. Kurien, Advocate), for the Respondent

Final Decision : Dismissed

Judgement

K. Sadasivan, J.—The State has come up in revision against the order of the Subordinate Judge of Quilon, rejecting the privilege claimed by the State u/s 124 of the Evidence Act in respect of two documents which the plaintiff in O. S. 55 of 1966 on the file of the same Court wanted the State to be produced in the case. The suit was against the State by the plaintiff who was the contractor for the construction of Vadasserikkara-Chittoor Road. The work started in 1960 and was expected to be completed by the middle of June, 1961. A considerable portion of the proposed road runs through reserve forest and a good number of timber trees had to be cut and removed to facilitate its construction. According to the plaintiff, the Forest Department did not co-operate in the cutting and removing of the trees and so, he could not complete the work within the period stipulated, and the work could be completed only in September, 1964. By the time, the rate of wages had gone UP and unforeseen loss was caused to him and it is for "getting reimbursement of the loss so sustained, that the suit was filed against the State. The two documents which the plaintiff wanted to produce were :--

(1) The estimate prepared by the Superintending Engineer pursuant to the plaintiff's request for enhanced rate on 4-9-1962, and 9-4-1964: and

(2) Recommendations of the Chief Engineer to the Government based on his report.

In respect of these documents, the claim was raised on behalf of the State that they are communications made in official confidence, and that they should not be compelled to disclose the contents of the documents, since by such disclosure, public interests were likely to suffer. The learned Judge had first negatived the claim of privilege without looking into the documents and forming his opinion on the basis of their contents. Against that order the State preferred C.R.P. 804 of 1969 and this Court, by its order dated 29th January, 1970, allowed the revision and remanded the case with direction to the learned Subordinate Judge that he should call for production of the documents in sealed covers and should dispose of the claim of privilege after perusing the documents. After remand the documents were produced in sealed covers as required by the learned Judge and the present order was passed by the learned Judge, negating the privilege, after a perusal of the documents.

2. I think, the view taken by the learned Judge is correct, and no interference is called for. Document No. 1 is an estimate prepared by the Superintending Engineer, Buildings and Roads. South Circle. Trivandrum giving the details of the work done by the plaintiff like. Quantity, nature and classification of work, the agreed rate for carrying out the work, the current schedule rate, and the extra amount to be paid to the contractor, in case the work is to be paid for according to the current rates; and document No. 2 consists of letters addressed by the Chief Engineer to the Government not recommending the extra amount due to the contractor, on the ground that the contractor had not applied for enhanced rates at the time of execution of the work and the contractor had submitted his petition for enhanced rate only after the work was resumed. From the written-statement filed by the State it would appear that the State does not seriously dispute the quantum and nature of work carried out by the contractor, or that the scheduled rates were enhanced after the contractor had started the work. As a matter of fact, it is admitted by the State that the rate of wages of workmen and the cost of material had gone up since the stopping of the work, and the plaintiff had requested the department for payment at the enhanced rate. The State's contention is that the plaintiff is not entitled to the enhanced rates under the agreement, and if the agreed rates were unworkable, he should have applied for enhanced rates at the time of execution and the department did not give him any assurance that enhanced rates would be allowed to him. It is in the face of these facts disclosed from the documents that the issue of privilege has to be decided. The sole criterion for the decision to be arrived at is whether by the disclosure of the contents of the documents, public interest would suffer. The observations of the House of Lords in *Conway v. Rimmer*, 1968-2 WLR 998, I think, would throw considerable light on the Question before me. In that case, the plaintiff who was a former probationary police constable, began an action for malicious prosecution against his former Superintendent. In the course of its discovery the defendant disclosed a list of documents in his possession or power admittedly relevant to

the plaintiff's action which included four reports made by him about the plaintiff during his period of probation and a report by him to his Chief constable for transmission to the Director of Public Prosecutions in connection with the prosecution of the plaintiff on the criminal charge on which he was acquitted and on which his civil action was based. The Secretary of State for Home Affairs objected in proper form of production of all five documents on the ground that each fell within a class of documents, the production of which would be injurious to the public interest. It was held that "the documents should be produced for inspection by the House of Lords, and if it was then found that the disclosure would not be pedicel to the public interest or that any possibility of such prejudice was insufficient to justify their being withheld, disclosure should be ordered." Held further that "when there is a clash between the public interest (1) that harm should not be done to the nation or the public service by the disclosure of certain documents and (2) that the administration of "justice should not be frustrated by the withholding of them, their production will not be ordered if the possible injury to the nation or the public service is so grave that no other interest should be allowed to prevail over it, but, where the possible injury is substantially less, the Court must balance against each other the two public interests involved.....If on balance, considering the likely importance of the document in the case before it, the Court considers that it should probably be produced, it should generally examine the document before ordering the production."

3. In the case it was found improbable that any harm would be done to the police service by the disclosure of the documents in question which might prove vital to the litigation.

4. So also in the present case, the matter for consideration is whether by the production of the documents the public interest would in any way, suffer. I do not think, on a careful perusal of the documents, that the documents have anything to do with public interest. Of course, they are vital documents for the litigation between the parties. They would throw a flood of light into the "contentions raised in the suit and minimise the scope of the controversy between the parties. By the reading of the documents my own impression is that justice would be frustrated if they are withheld so far as the plaintiff's claim is concerned. As observed by the Jammu and Kashmir High Court in *Tirath Ram v. Govt.* of AIR 1954 J & K. 11:

"A distinction has to be drawn between cases where two citizens engage in civil litigation and want official communications to be disclosed at the time of the trial, and cases, in which the State has entered into a commercial transaction with a private citizen in the course of which the State has made certain communication pertaining to the cases in which it is interested as a defendant or a plaintiff. In the former case the State not being interested either way, a Government officer is expected to keep before himself only the interests, of the public before a privilege is claimed. But in a case in which the State itself is a party, the Court

must be satisfied that the mind of a responsible officer of the Government has been applied to the question as to whether the safety of the public interests warrants giving or withholding of the information. The Court must also be convinced that the privilege is not claimed to avoid inconvenient disclosures which may tell against its own side in the litigation or as a matter of mere departmental routine."

In the case on hand, I am led to conclude from the anxiety shown by the Government in withholding the documents which in fact, are purely routine communications from one officer to another having no bearing on "public interest", the Government are fighting shy of the plaintiff's claim, and if the documents are produced, the result will be to load the dice against the Government. That ought not to be the attitude expected of the Government, when they are fighting a private individual.

5. The result is that the order of the Court below is confirmed, and this revision petition is dismissed.