
(1982) 05 SHI CK 0008
In the High Court Of Himachal Pradesh

State of Himachal Pradesh

APPELLANT

Vs

Manmohan Bhardwaj and Others

RESPONDENT

Date of Decision : 05-05-1982

Acts Referred:

Evidence Act, 1872 — Section 123, 162

Citation : (1983) 1 LLJ 474 : (1982) ShimLC 281

Hon'ble Judges : V.P. Gupta, J; T.R. Handa, J

Bench : Division Bench

Judgement

T.R. Handa, J.—The sole question involved in this revision petition concerns the validity of the privilege claimed by the petitioner State of Himachal Pradesh u/s 123 of the Evidence Act against the production of certain documents which had been summoned from it by the trial court at the instance of the respondent. The question arises in the following circumstances.

2. The respondent who is the plaintiff in the court below is an employee of the Public Works Department of the petitioner State. It appears that in the matter of promotion he was superseded by some of his junior colleagues on the basis of the recommendation of the Departmental Promotion Committee constituted for the purpose. The plaintiff thereupon filed a suit in the trial court wherein he inter alia, prayed for issue of a declaration that the order of defendant No. 1 promoting his junior colleagues was illegal and void and that plaintiff-respondent was entitled to be promoted,

3. It was in the course of the trial of this suit that the plaintiff summoned the documents mentioned below from the concerned officer of the petitioner State:

1. Complete confidential reports of plaintiff and S/Shri Saran Dass, B.K. Prabhakar, Lajju Ram, Gurdev Singh, Suraj Kishan, Parath Singh Vatsa, Liaq Ram Verma and Jyoti Parshad Kapoor.

2. Minutes of the Departmental Promotion Committee promoting S/Sri Saran Dass, B.K. Prabhakar, Lajju Ram Sharma, Gurdev Singh, Suraj Kishan, Parath

Singh Vatsa, I.S. Grover, Liaq Ram Verma and Jyoti Prashad Kapoor as Circle Superintendents on 28 October, 1974.

4. The Petitioner State claimed privilege against the production of these documents. An affidavit to that effect was filed by the Secretary (Public Works Department) of the petitioner State. The relevant portion of the affidavit reads like this:

I have carefully considered the relevant documents and have come to the conclusion that they are unpublished official records relating to the affairs of State and their disclosure will be prejudicial to public interest for the following reasons:

Such documents are of the nature which are to be kept secret and the practice of keeping this type of documents is necessary for the proper functioning of the public service.

I do not, therefore, give permission to anyone u/s 123 of the Evidence Act, 1872, to produce the said documents or to give any evidence.

5. Section 123 of the Evidence Act obviously constitutes a serious departure from the ordinary rules of evidence. It is well known that in the administration of justice it is a principle of general application that each party to the dispute must produce all the relevant and material evidence in its possession or power which is necessary to prove its contention. Failure on the part of a party to comply with this rule would attract the provisions of Section 114 of the Act under which the court would be justified in drawing an adverse inference against such a party that in case the document had been so produced, it would not have supported the contention of the party. The principle on which this departure from the ordinary rules of evidence can be and is justified is the doctrine of the overriding and paramount character of public interest. The claim for privilege is founded on the theory that in case the production of a particular document would cause prejudice or injury to public interest and its non-production would result in prejudice or injury to some private interest, the latter must yield to the former.

6. The latest law on the subject is reported in S.P. Gupta Vs. President of India and Others, of this report deals with the manner in which privilege should be claimed u/s 123 of the Evidence Act. The relevant observations are as under:

Now we may conveniently at this stage consider the question as to how a claim for immunity against disclosure should be raised u/s 123. It is necessary to repeat and re-emphasize that this claim of immunity can be justifiably made only, if it is felt that the disclosure of the document would be injurious to public interest. Where the State is a party to an action in which disclosure of a document is sought by the opposite party, it is possible that the decision to withhold the document may be influenced by the apprehension that such disclosure may adversely affect the head of the department or the department itself or the minister or even the Government or that it may provoke public

criticism or censure in the legislature or in the press, but it is essential that such consideration should be totally kept out in reaching the decision whether or not to disclose the document. So also the effect of the document on the ultimate course of the litigation whether its disclosure would hurt the State in its defence—should have no relevance in making a claim for immunity against disclosure. The sole and only consideration must be whether the disclosure of the document would be detrimental to public interest in the particular case before the Court.

Dissenting from the earlier view of the Supreme Court as expressed in *The State of Punjab Vs. Sodhi Sukhdev Singh*, the Constitutional Bench in *S.P.Gupta's case* (supra) observed that the basic question to which the court would therefore have to address itself for the purpose of deciding the validity of the objection against the claim of privilege would be whether the document relates to the affairs of the State or in other words, it is of such a character that its disclosure would be against the interest of the State or the public service and if so, whether the public interest in its non-disclosure is so strong that it must prevail over the public interest in the administration of justice and on that account, it should not be allowed to be disclosed. The final decision in regard to the validity of an objection against disclosure raised u/s 123 would always be with the court by reason of Section 162 of the Evidence Act. The following observations made by Justice Mathew in the case of *The State of U.P. Vs. Raj Narain and Others*, were cited with approval in *S.P. Gupta's case* (supra) (at P.883.):

The claim of the executive to exclude evidence is more likely to operate to subserve a partial interest, viewed exclusively from a narrow departmental angle. It is impossible for it to see or give equal weight to another matter, namely, that justice should be done and seen to be done. When there are more aspects of public interest to be considered, the court will, with reference to the pending litigation, be in a better position to decide where the weight of public interest predominates.

The determination of the question whether a claim for privilege u/s 123 of the Evidence Act should be allowed or disallowed in a particular case would thus involve the striking of a balance between the two injuries, the one likely to be caused to public interest by the disclosure of the document and the other which may be caused to the administration of justice by the non-disclosure of such document. This balance has of course to be struck by the Court itself and not by the authority claiming the privilege.

7. The stage of striking such balance would, however, reach only after the court finds that the document in respect of which privilege is claimed, relates to the affairs of the State and that its disclosure is likely to result in some injury, however small, to public interest. Where, however, the court finds that the document does not relate to the affairs of the State and its disclosure is in no manner injurious to public interest, it can straightway disallow the claim for privilege. This in fact is exactly what has been done by the court below in the instant case and we see every reason to endorse the view taken by that court.

8. As stated earlier the documents in respect of which the State claimed privilege before the trial Court are of two types. The first category relates to the Annual Confidential Reports of Government employees. Now an Annual Confidential Report only contains the assessment of the work and conduct of a public servant as made by his superior officers on the basis of their observations regarding his performance and conduct for a particular period. These reports are used for assessing the suitability of a public servant for his future promotions as also for considering the desirability for his retention in Government service. These reports would, therefore, serve their purpose only if they reflect the honest and frank opinions of the reporting officers objectively" on the basis of their assessments of the work and conduct of their subordinates. The privilege against the production of such documents is sought to be claimed on the pretext that if the Annual Confidential Reports are not kept confidential and are disclosed, the reporting officers are likely to feel embarrassed and may not be in a position to properly discharge their official functions in the matter of recording such reports. We find no merit in this contention, A reporting officer is likely to feel embarrassed by the disclosure of the Annual Confidential Reports recorded by him only if the same do not reflect his honest and independent assessment of the work and conduct of his subordinates. An officer who has recorded the Annual Confidential Reports on the basis of his honest and independent assessment has no reason to feel embarrassed by the disclosure of his independent, honest and objective assessment. On the other hand we are of the opinion dial it will induce the reporting officer to become more objective honest and independent in the matter of recording of Annual Confidential Reports. Looking the matter from this point of view the disclosure of the Annual Confidential Reports would only advance the cause of public interest. In any case we are of the firm view that the disclosure of such Annual Confidential Reports is not likely to result in any public injury nor is it likely to discourage the honest reporting officer to discharge his official functions in the matter of recording such Annual Confidential Reports objectively and honestly. The records of Annual Confidential Reports, therefore, cannot be said to relate to the affairs of the State and no privilege can be claimed against the production of this category of documents u/s 123 of the Evidence Act.

9. The minutes of the Departmental Promotion Committee which is the other category of documents in respect of which privilege has been claimed by the State, are generally based upon the records of the Annual Confidential Reports and the reasons advanced for disallowing privilege in respect of Annual Confidential Reports would equally apply for disallowing privilege claimed in respect of the minutes of the Departmental Promotion Committee. We thus find that the disclosure of the minutes of the Departmental Promotion Committee also is not likely to cause any injury or prejudice to any public interest nor is it likely to adversely affect the functioning of the public service.

10. We thus find that the claim of privilege has been rightly disallowed by the trial court and dismiss this revision petition.