

(1974) 12 OHC CK 0008
In the Orissa High Court
Case No : Civil Revisions No. 35 of 1974

State of Orissa and Others

APPELLANT

Vs

Jagannath Jena

RESPONDENT

Date of Decision : 18-12-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 14
Evidence Act, 1872 — Section 121, 123, 124

Citation : (1975) 41 CLT 363

Hon'ble Judges : S.K. Ray, J

Bench : Single Bench

Advocate : Addl. Government Advocate, for the Appellant; L. Rath, J.K. Rath and A.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Ray, J.—Both these Civil Revisions have been heard analogously, because they involve the identical question of law, viz. whether the claim of privilege advanced by the State of "Orissa who is the Petitioner in both these Revisions is justified or has been erroneously negated.

2. The opposite party in C.R. 35/74, Jagannath Jena, filed Title Suit No. 25 of 1971 in the Court of the First Munsif, Cuttack for setting aside the order dated 9-6-1965 discharging him from the Police Training College; Angul where he had joined as a cadet Sub-Inspector of Police. The Petitioner impugned the order of discharge on the ground, inter alia, or mala fide on the part of the concerned authorities in passing the order of discharge. He also alleged that the authorities in considering the question of readmitting him and another discharged cadet Sub-Inspector, namely, Gagan Bihari Mohanty showed favour to the latter, since he was the nephew of the then Minister Shri Satyapriya Mohanty. After written statements were filed, the Petitioner called for certain documents from the Defendants under Order 11, Rule 14 Code of Civil Procedure. The documents called for were enumerated in the schedule annexed to that petition. The

Defendants claimed privilege in respect of serial Nos. 1, 4 and 8 of the annexed schedule under Sections 123 and 124 of the Indian Evidence Act on the ground that the documents called for relate to the affairs of the State and that their disclosure would cause injury to the public interest. This privilege was claimed in an affidavit filed by the Inspector-General of Police (Petitioner No 2). This claim of privilege was rejected and, accordingly, the Petitioner filed Civil Revision No. 10 of 1973. This was allowed and the matter was remanded back to the trial Court for reconsideration of the question of privilege on the basis of an affidavit of the Secretary to Government of Orissa in the Home Department which was filed in course of hearing of the Civil Revision, since the Inspector-General's affidavit was not considered to be a proper affidavit required under law. On a reconsideration, the Munsif has again rejected the claim of privilege. Hence this Civil Revision.

3. Similarly, in the other, Civil Revision, the Petitioner, opposite party, Hemanta Kumar Jena, who had similarly been selected as Sub-Inspector of Police and had joined as a cadet Sub. Inspector of Police at Police Training College. Angul was also discharged from the college on 9-6-1965. His representations against the order of discharge having failed, he filed the present suit for setting aside the order of discharge. He imputed in his plaint mala fide and malice to the concerned authorities who were instrumental in passing the order of discharge. After the Defendants-Petitioners filed their written statement, Plaintiff opposite party filed a petition calling for certain documents from the Defendants under Order 11, Rule 14 CPC and the Defendants claimed privilege in respect of serial Nos. 1, 4 and 8 of the schedule annexed thereto. They are the identical documents which were called for also in the other suit referred to above. The trial Court also rejected this claim of privilege and the Defendants came up to this Court in Civil Revision No. 11 of 1973. In course of hearing of that Civil Revision the Secretary to Government, Home Department filed an affidavit as the affidavit filed by the Inspector-General of Police was not an appropriate one, and, accordingly, the matter was remanded back to the trial Court for reconsideration of the question of privilege on the basis of affidavit of the Home Secretary. After remand, the claim of privilege has also been rejected. Hence this Civil Revision.

4. Out of the three documents in respect of which privilege was originally claimed, the claim is not pressed in respect of item No. 4. Therefore, the question to be considered is whether the Petitioners are entitled to the claim of privilege in respect of items 1 and 8. The description of documents contained in serial Nos. 1 and 8 are set forth herein below.

1. Opinion of the Deputy Chief Minister and the corresponding file appointing the Petitioner in a stopgaping arrangement as per para-16 of the plaint vide file No. 1M-33-64.

8. Records in respect of Gagan Bihari Mohanty, S.I. of Police Service Book, p.m. Form No. 102, 1964 Examination papers at the time of Final examination and reason of discharge with 1905 Recruitment Examination Papers viz. Oriya,

English and G.K. with Treasury chalan with P.M. Form No. 102 before facing Central Selection Board.

The question of privilege has to be considered in the light of Sections 123 and 124 of the Indian Evidence Act, which provide the grounds for such claim of privilege. Section 123 prohibits tendering any evidence derived from unpublished official records relating to any affairs of the State unless the officer as the Head of Department concerned permits such evidence to be given. Section 124 prohibits a public officer from disclosing communication made to him in official confidence when he considers that the public interest would suffer by such disclosure. The aforesaid documents may be said to construe unpublished official records. But it is to be examined whether their contents can be said to relate to any affairs of the State or their disclosure would be against public interest.

5. According to the affidavit of the Home Secretary, item No. 1 relates to correspondence file with regard to the appointment of the Petitioner and its disclosure would lead to public injury as freedom and candour of expression of opinion would materially affect" and "would also affect the efficient administration of public affairs". He further states with reference to this document that the file with its confidential nothings made by the respective officers are documents relating to the affairs of the State and the State is entitled to claim privilege under Sections 123 & 124 of the Evidence Act. He further adds that the aforesaid file contains communication made in official confidence to the I.G. which is also privileged u/s 124 of the Evidence Act.

With regard to the documents in item No. 8 it is said that they relate to affairs of the State and its disclosure would lead to injure public interest.

6. u/s 123 of the Evidence Act the privilege can be claimed if the document relates to any affairs of the State. u/s 121 privilege, similarly, can be claimed if by disclosure of the contents of the document the public interest would suffer.

7. There are two categories of documents which can be said to relate to affairs of the State. Documents whose contents, if disclosed, would affect national defence or public security or good neighbourly relations of the country belong to one category.

The other category comprises of such documents, disclosure of whose contents would not affect the national defence, public security or good neighbourly relations but would materially affect the freedom and candour of expression of opinion in the determination and execution of public policies. This second category would include notes and minutes made by respective officers on the relevant files, opinion expressed or reports made and gist of official decisions reached in course of determination of the said questions of policy. Privilege in regard to this second category of documents can be claimed in the interest of efficient administration of public affairs. In other words, the said category may claim the status of document relating to public affairs if their disclosure would cause possible injury to public interest or impair the proper functioning of the

public service vide *The State of Punjab Vs. Sodhi Sukhdev Singh*, , relied upon in *State of Orissa v. Jagannath Jena* 1973 (1) C.W.R. 661. The documents in question do not come within the first category. The only question to determine is whether these are documents of the second category. The affidavit filed by the Home Secretary does not indicate the reason as to why it is apprehended that the disclosure of the contents of the documents would be injurious to the public interest. It is nothing more than reproduction of the language of the section. The privilege in respect of opinion, notes and minutes made by officers on the principle of freedom and candour of expression can be claimed only if such opinion, notes and minutes relate to determination and execution of public policies or if their disclosure would otherwise injure public interest. The affidavit, as indicated above, does not give any indication that the opinion, notes and minutes made by officers relate to or involve determination and execution of any public policy. Item No. 1 relates to the opinion of the Deputy Chief Minister and the file respecting the appointment of the Petitioner Item No. 8 relates to documents comprising of examination papers of a candidate Gagan Bihari Mohanty at the time of final examination and the reason of his discharge and other incidental matters connecting him. I fail to see how the aforesaid records would, in any manner, relate to that class of documents whose disclosure would cause injury to public interest in contradistinction to private interest. If the Government acted bona fide in the matter of appointment or discharge of any particular candidate and if there was a bona fide examination held, there can be no secrecy about it. If the Government had acted bona fide the disclosure of those documents, far from injuring any public interest, would serve it by showing that the popular Government has acted Impartially without any oblique motive thereby improving its image in the public eye. Appointment of officers or their discharge on ordinary ground of ineptitude corruption cannot be said to involve matters relating to determination and execution of public policy. Therefore mere expression of opinion of various hierarchy of officers on the file as to the suitability or unsuitability of a particular candidate for a post and the results obtained by such candidate in any examination held for appointment to that post are normally not matters which would affect the efficient administration of public affairs. If disclosure of these two aforesaid documents would really affect the determination and execution of any public policy of the Government then that should have been stated in the affidavit of the Home Secretary. Since there is always a Likelihood that obliquely motivated officers might push forward interest other than that of the public masquerading in the garb of public interest and take undue advantage under Sections 123 and 124 of the Evidence Act, it is incumbent that they should disclose the aspect of public interest which would be jeopardized or impaired by such disclosure. To repeat, there is no such indication in the affidavit of the Home Secretary. In my opinion, the learned Munsif was justified in holding that items 1 and 8 are not privileged documents.

8. For the aforesaid reasons these two Revisions must be dismissed with costs which are assessed at one gold mohur in each Revision.