

(1979) 01 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Revision Petition No. 118 of 1973

State of Rajasthan

APPELLANT

Vs

Smt. Kailashwati and Others

RESPONDENT

Date of Decision : 03-01-1979

Acts Referred:

Evidence Act, 1872 — Section 123, 124

Citation : AIR 1979 Raj 221 : (1979) RLW 366

Hon'ble Judges : Dwarka Prasad, J

Bench : Single Bench

Advocate : S.B. Mathur, for the Appellant; B.P. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Dwarka Prasad, J.—In this revision petition the question of privilege claimed by the State of Rajasthan in respect of certain documents has been raised.

2. A suit was filed in the court of the Additional District Judge No. 2, Jaipur City in respect of an amount alleged to be due to a contractor for the construction of a minor irrigation project. The defendant, State of Rajasthan, in its written-statement took the stand that nothing was due to the plaintiffs and the deductions alleged to have been made were rightly made. During the course of the trial, the plaintiffs called upon the defendant State of Rajasthan to produce a number of documents, and in respect of four of the documents, which were thus sought to be produced, a claim of privilege was advanced by the defendant State of Rajasthan. Shri Vishnu Dutt, the then Secretary in the Irrigation Department, Government of Rajasthan, filed an affidavit on Jan. 10, 1970 in support of the claim of privilege by the State and he averred therein that he had read and considered the four documents in question, which were unpublished official records pertaining to the case, and relating to the affairs of the State and the production and disclosure of the said documents would hurt public interest and would be prejudicial to public interest. Out of the four documents in respect of which privilege was claimed, three were letters written by the Executive

Engineer, parbati Irrigation Project, Dholpur to the Superintending Engineer, Irrigation Department, Jaipur Circle, Jaipur while the fourth one was a letter written by the Assistant Engineer of the aforesaid irrigation project to the Executive Engineer of the said project. The Additional District Judge No. 2, Jaipur City, after considering the affidavit produced by the Secretary to the State Government in the Irrigation Department and after inspecting the documents, held that the claim of privilege in respect of such documents could not be sustained. He was of the view that the Irrigation Secretary to the Government of Rajasthan did not disclose in his affidavit as to why he apprehended that the disclosure of the documents in question would lead to injure public interest. He, therefore, disallowed the claim of privilege and directed the State to produce the four documents in question in the case. Dissatisfied with the order passed by the learned Additional District Judge, this revision petition has been preferred in this Court.

3. When the matter came up for hearing on July 27, 1977 before this Court, learned Government Advocate appearing for the State of Rajasthan prayed for some time to get the documents, in respect of which privilege was sought, and an adjournment was allowed to the State to produce the documents for the inspection of the Court. However, even after a lapse of 17 years, learned Additional Government Advocate expressed his inability even today to produce the documents in question for the inspection of this Court. It need not be emphasised that it was the duty of the petitioner State of Rajasthan to produce the documents for the inspection of the court, more particularly when the time was sought for this purpose on July 27, 1977 and was allowed, but as the State has not been able to produce the documents even today, I have no alternative but to rely upon the substance of the documents, as contained in the order of the learned Additional District Judge No. 2, Jaipur City.

4. A perusal of the affidavit filed by the Irrigation Secretary to the Government of Rajasthan shows that the officer filing the affidavit expressed his opinion that the disclosure of the documents in question would cause hurt to public interest and would be prejudicial to the public interest, but he failed to disclose the reasons upon (which) his aforesaid opinion was based. In *The State of Punjab Vs. Sodhi Sukhdev Singh*, the matter regarding claim of privilege under Sections 123 and 124 of the Indian Evidence Act has been exhaustively considered by their Lordships of the Supreme Court. In *Sodhi Sukhdev Singh's* case their Lordships have also laid down the manner in which the claim of privilege under Sections 123 and 124 of the Indian Evidence Act has to be made. It has been held that the privilege should be claimed generally by the Minister-in-Charge, who is the political head of the department concerned, if not claimed by him, then the Secretary of the department, who is the departmental head, should claim the privilege by filing an affidavit. Their Lordships have laid down in the aforesaid case as under:--

"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 is 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. The affidavit should also indicate briefly within permissible limits the reason why it is apprehended that their disclosure would lead to injury to public interest. This last requirement would be very important when privilege is claimed in regard to documents which prima facie suggest that they are documents of a commercial character, having relation only to commercial activities of the State."

5. It is not in dispute in the present case that the suit relates to a commercial transaction between the State and the legal representatives of the deceased contractor, who had constructed the right flank of the Earthen Dam of Parbati Irrigation Project. The plaintiffs claimed in the suit that certain deductions were wrongfully made by the defendant from the amount payable to the contractor for the work done. While, according to the State of Rajasthan, the deductions were rightly made. The letters written by the Executive Engineer or the Assistant Engineer to his superior officers are in respect of the work done by the contractor in relation to the contract, which was subject-matter of the suit. In such circumstances, it was absolutely necessary for the Irrigation Secretary to the Government of Rajasthan, not only to express a view that the disclosure of the documents in question would adversely affect public interest, but he should have also stated the reasons, within permissible limits, as to why an injury to public interest was apprehended from the disclosure of the documents. A mere mechanical repetition of the words that the production and disclosure of the documents would injure public interest or would be prejudicial to the public interest would not be sufficient. The Court should be satisfied that there was a real danger of some injury being caused to the larger public or national interest by the production or disclosure of the documents in question. In *Amar Chand Butail Vs. Union of India (UOI) and Others*, a claim of privilege was advanced in respect of a letter written by the Chief Conservator of Forest to the Accountant General of Punjab and Himachal Pradesh. Their Lordships of the Supreme Court rejected the claim of privilege, not only on the ground that the affidavit filed by the party for making claim for privilege was unsatisfactory, but also on the ground that the document might have damaged the defence of the State but did not injure public interest. Their Lordships observed in *Amar Chand Butail's* case that the case was illustrative of the casual manner in which privilege is sometimes claimed by the State, without realizing the solemnity and significance attached to the exercise of the powers conferred on the Head of the department to make such claim of privilege. The test is not whether the documents, in respect of which privilege is claimed, if produced, would adversely affect the defence taken by the State in the suit, but the real test is whether withholding the disclosure is necessary in the public interest or national interest,

6. In *The State of U.P. Vs. Raj Narain and Others*, it was held by their Lordships of the Supreme Court that if the court found on inspection that a document is

innocuous, in the sense that it does not relate to affairs of State, the court could order disclosure of the innocuous part. In the last mentioned case, privilege was claimed in respect of the "Blue book", which contained instructions relating to the protection and security of the Prime Minister, when on tour and in travel. Their Lordships observed in Rajnarain's case, as under;--

"It is that injury to public interest is the reason for the exclusion from disclosure of documents whose contents if disclosed would injure public and national interest. Public interest which demands that evidence be withheld is to be weighed against the public interest in the administration of justice that courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. The court will proprio motu exclude evidence the production of which is contrary to public interest."

It is not the case of the State that the documents in respect of which claim of privilege was advanced in this case constitute confidential papers, containing expression of opinion of the officers of the State in respect of matters of public policy or that there were insinuations made against anybody, which might expose the maker thereof to civil or criminal action. The argument of the learned Additional Government Advocate is that the production or disclosure of the documents may affect the free expression of opinion by the officers of the State, The Irrigation Secretary, who has filed the affidavit in support of claim of privilege, has not said so. Although I had not the benefit or advantage of having a look at the documents, because of the attitude adopted by the State in not producing such documents for the inspection of the Court, yet I find no reason not to accept the view expressed by the learned Additional District Judge, after inspecting the "documents in question. According to him, the junior officers had made recommendations or made remarks favourable to the contractor in the letters written by them to their superiors and any such expression of opinion by junior officers will neither expose them to any civil, criminal or even departmental action nor that would affect the free expression of opinion by the officers of the State. In my view, there is no reason to interfere with the discretion exercised by the learned Additional District Judge, in rejecting the claim of privilege advanced by the State of Rajasthan in respect of the four documents in question.

7. In the aforesaid circumstances, I find no substance in this revision application and the same is dismissed with costs.