
(1990) 07 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3778 of 1987

The State of Punjab

APPELLANT

Vs

Madan Lal Gupta and Others

RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

Evidence Act, 1872 — Section 123

Citation : (1991) 2 ILR (P&H) 262 : (1990) 98 PLR 475

Hon'ble Judges : A.L. Bahri, J

Bench : Single Bench

Advocate : Anil Malhotra, for the Appellant; M.L. Merchea and M.P. Gupta, for the Respondent

Judgement

A.L. Bahri, J.—State of Punjab has filed this revision petition challenging order dated September 4, 1987, passed by Senior Sub-Judge, Ludhiana, disallowing the claim of privilege made by Secretary to Government, Punjab, with respect to production of documents at the stage of plaintiff's evidence In the suit brought by Madan Lal Gupta, challenge was to the order of his dismissal from Punjab Civil Service (Judicial Branch) dated June 30, 1977. The suit was contested and during the trial M.L. Gupta-the plaintiff, summoned Amar Nath Gandhi, an Assistant of the Office of Home Secretary to Government, Punjab, Chandigarh, with the office file showing the action taken on his representations dated January 12, 1977, January 27, 1977 and June 21/24, 1977 addressed to the Chief Minister of Punjab. The State of Punjab claimed privilege by means of an affidavit sworn by Sh. R.P. Ojha, IAS, then Finance Commissioner and Secretary to Government, Punjab, Department of Home Affairs and Justice. In the said affidavit he stated that he had carefully considered the aforesaid documents and came to the conclusion that it comprises of documents and notings which have been made by various officers and officials in the discharge of official duties and the same were not public official records relating to the affairs of the State and that the disclosures of the contents of such documents and files would expose the said officers/officials and as such would hamper the proper functioning of the public

services as the officers/ officials would in future feel hesitant in expressing their opinions fearlessly in such administrative matters That being the position he did not give permission to anybody to give evidence derived therefrom as required u/s 123 of the Indian Evidence Act. Disagreeing with the opinion expressed by the Secretary, Punjab Government, Senior Sub Judge, directing the relevant records to be produced in the Court on the next date to be fixed for recording evidence of the plaintiff.

2. Section 123 of the Indian Evidence Act reads as under : -

"123. Evidence as to affairs of State :--No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit."

The aforesaid provision has been subject-matter of discussion in several judicial pronouncements. It will be useful to refer to them.

3. In *The State of Punjab Vs. Sodhi Sukhdev Singh*, , in the majority judgment it was observed as under :--

"Reading Sections 123 and 162 together the Court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in respect of which privilege is claimed u/s 123. That is a matter for the authority concerned to decide; but the Court is competent, and indeed is bound, to hold a preliminary enquiry and determine the validity of the objections to its production, and that necessarily involves an enquiry into the question as to whether the evidence relates to an affairs of State u/s 123 or not.

In this enquiry the Court has to determine the character or class of the document. If it comes to the conclusion that the document does not relate to affairs of State then it should reject the claim for privilege and direct its production If it comes to the conclusion that the document relates to affairs of State then it should reject the claim for privilege and direct its production. If it comes to the conclusion that the document relates to affairs of State it should leave it to the head of the department to decide whether he should permit its production or not.

Documents which embody the minutes of the meetings of the Council of Ministers and indicate the advice which the Council ultimately gave to the Rajpramukh and the document embodying the advice tendered by the Public Service Commission to the Council of Ministers, are protected u/s 123 and if the head of the Department does not give permission for their production, the Court cannot compel the State to produce them."

4. In *Niranjan Dass Sehgal v. State of Punjab through Secy, to Govt. of Punjab Dept. of Forests*, AIR 963 Punj. 255, a privilege claimed by the State with respect of notings or the departmental enquiry which were held to be unpublished documents was declined.

5. Relying upon the aforesaid decision of the Supreme Court in Sukhdev Singh's case, this Court in *Union of India v. Parkash Lal* 1977 (1) S.L.R. 565, in the case of notings on the file relating to termination of the Government servant the privilege claimed by the State was declined.

6. In *Ram Dev v. The State of Haryana*, 1978 R.L.R. 433, this Court held in the case of order of dismissal of an employee based on the report of the Enquiry Officer and evidence recorded during enquiry held that the evidence and noting by officials during proceedings of the enquiry could not be held to im(sic)air interest of administration or injure public interest In such circumstances it was held that no privilege could be claimed in respect of such documents. The Supreme Court in the case *Judge" transfer, S.P. Gupta Vs. President of India and Others*, , the observations made in Sukhdev Singh's (supra) were re-iterated. In para 513 of the judgment at page 363 again the view taken in *Sodhi Sukhdev Singh's* case was approved being based on English law and that provision of Sections 123 and 124 of the Act was not ultravires.

7. A perusal of the judgments referred to above clearly indicates that in the matter of departmental enquiries conducted against Government employees to privilege could be claimed by the State in respect of notings or opinions expressed on the file during such proceedings. Thus, it is to be seen in each case about the nature of documents asked for by the employee to determine whether the State could claim privilege u/s 123 of the Evidence Act. In case the documents regarding which privilege is claimed related to departmental proceedings i.e. proceedings contemplated under the service rules, obviously the privilege could not be claimed However, with respect to other matters for which service rules do not contemplate the State would be within its rights to claim privilege in respect of office notings or opinions expressed by officers or the officials on such matters. In the present case the plaintiff wanted production of his representations made to the Chief Minister and the privilege is being claimed in respect of those representations on which some office notings or opinions were expressed by the Government servants. It has not been shown as to under what provision of the service rules or the statutes such representations were maintainable or that these representations could in any manner be called proceedings under the rules such as departmental proceedings. That being the position, the State could legitimately claim privilege with respect to office notings or opinions expressed on such representations. However, the evidence regarding the representations, their contents or the final order passed by the appropriate authority allowing or rejecting the same can well be brought on the record in evidence.

8. With the above observations present revision petition is allowed. The order of the trial court summoning the documents asked for is modified to the extent that the officer bringing the same will not be called upon to give evidence with respect to office notings or opinions expressed on such representations made to the Chief Minister, However, he would be at liberty to give evidence regarding the

representations as such and the final order passed thereon Revision Petition disposed of as above. No order as to costs. The parties through their counsel are directed to appear in the trial Court on August 6, 1990.