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CENTRAL ADMINISTRATIVE TRIBUNAL  
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MISC. APPLICATION NO: 118 OF 1991  
(ARISING OUT OF O.A. 65 OF 1991)

Date of decision: April, 30, 1991.

G. Mohan Kumar : Applicant

Versus

State of Orissa & others : Respondents.

For the Applicant

: M/s. J.Das,  
B.S.Tripathy,  
K.P.Misra,  
S.Mallik,  
B.Sahoo,  
Advocates.

For the Respondent No.1 : M/s. Advocate General (State)  
K.C.Mohanty, G.A. (State)

For the Respondent No.2. : Mr. G.A.R. Dora, Advocate.

For the Respondent No.3 : Mr. Ashok Mohanty, Standing  
Counsel (Central)

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P R E S E N T :

THE HON'BLE MR. B.R.PATEL, VICE CHAIRMAN  
A N D

THE HON'BLE MR. N.SENGUPTA, MEMBER (JUDICIAL)  
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O R D E R

Pronounced by the Hon'ble Mr. B.R. PATEL, VICE CHAIRMAN.

Over the last few days we have heard arguments of the rival parties to the case of Original Application No. 65 of 1991 in the matter of; (i) extension of the interim order of stay passed on 12th March, 1991; (ii) production of the relevant files of the State Government at the instance of the applicant and (iii) the applicant's right for inspection of those documents. We are of the view that the stay order dated 12th March, 1991 is inextricably connected with the merit of the order of suspension which is the subject matter of the case and as such we would like to hear on the question of further extension of stay as well as the merit of the case of Original Application No. 65 of 1991 later. This order is confined to the applicant's rights for inspection of the documents i.e. the Revenue Department file and the file of the General Administration Department produced by the State Government.

2. We have heard elaborate arguments on this question. On 8th April, 1991 in the course of argument

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both the learned Advocate General and the Government Advocate(State) wanted time to claim privilege because according to them the files are of Confidential nature. Time was allowed till thursday i.e. 11th April, 1991 when the case was to be listed with M.A. 106 of 1991 and M.A. 118 of 1991.

3. In the counter filed by the Respondents in M.A. 118 of 1991 filed by the applicant, the State of Orissa claimed privilege in the matter of production of the file of General Administration Department before the Tribunal. In the aforesaid counter they further claimed privilege in the matter of inspection of records by the applicant. The case adjourned to 19th April, 1991 when the learned Advocate General produced the files of the General Administration Department and pleaded that it was only for the perusal of the Tribunal and not for the inspection by the applicant or his advocate.

4. Mr. Das the learned Counsel for the applicant wanted time to submit a written note. Earlier on that day Mr. Das argued at length about the

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applicant's rights for inspection of the State Government's files. In the matter of claiming privilege under Sections 123 and 124 of the Evidence Act, 1872, Mr. Das has argued that any privilege claimed without following the procedure in the judgment of the Hon'ble Supreme Court reported in A.I.R. 1961 SC 493 (State of Punjab Vs. S.S. Singh) will not have any validity. He has particularly drawn our attention to paragraph-23 of the aforesaid judgment. the relevant portion is quoted below:

"Since it is not unlikely that extraneous and collateral purposes may operate in the mind of the person claiming the privilege it is necessary to lay down certain Rules in respect of the manner in which the privilege should be claimed generally by the Minister in charge who is the political Head of the Department concerned; if not, the Secretary of the Department who is the Departmental Head should make the claim; and the claim should always be made in the form of an affidavit". (Underlining for emphasis).

Mr. Das has also drawn our attention to another judgment in the case of Amar Chand Butail Vs. Union of India



reported in AIR 1964 SC 1658. This case has referred to the judgment in the case of State of Punjab Vs. S.S.Singh quoted above. Paragraph-11 of the judgment refers to the judgment of the earlier case i.e. AIR 1961 SC 493 and states as follows:

"The other aspects of the problem decided in that case relates to the manner in which privilege should be claimed. It was stated in that case that the claim should generally be made by the Minister incharge who is the political head of the Department concerned and the affidavit made in that behalf should show that each document in respect of which the claim is made has been carefully read and considered, and the person making the affidavit is bona fide satisfied that its disclosure would lead to public injury."

Paragraphs 12 makes the point further clearer:

" XXX EX XXXX XX XXXX XX XXXX XXXX  
As we have already indicated, a document signed by the Home Minister of Himachal Pradesh had been filed, but it is urged by Mr. Setalvad that this document cannot be treated as an affidavit at all. No doubt it contains the statement that it is solemnly affirmed but the person who made that statement probably was not familiar with the requirements which had to be satisfied in making an affidavit. The learned Additional Solicitor-General had

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to concede that on the face of it, the document cannot be treated as an affidavit which is required to be filed for the purpose of making a claim for privilege. On this preliminary ground alone the claim for privilege can be rejected.

(Underlining has been done for emphasis)

In paragraph 13, the Hon'ble Supreme Court have observed that

"the statement made by the Home Minister does not show that he seriously applied his mind to the contents of the documents and examined the question as to whether their disclosure would injure public interest. We are constrained to observe that this case illustrates how a claim for privilege can be and is sometimes made in a casual manner without realising the solemnity and significance attached to the exercise of the power conferred on the head of the department to make that claim".

These two judgments have laid down the procedure for claiming privilege. In the present case the procedure so laid down has not been followed. Neither the Minister incharge of the Department nor the Secretary of the Department has claimed privilege on affidavit after proper application of mind to the contents of the documents. The Learned Advocate General and the

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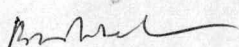


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learned Counsel for the Respondent No.2 have only made oral submission claiming privilege. Such submission cannot take the place of an affidavit as prescribed by the Hon'ble Supreme Court in these two judgments. Even when an affidavit is filed if it has not been made properly the Hon'ble Supreme Court have observed that such document cannot be treated as an affidavit which is required to be filed for the purpose of making the claim for privilege.

5. Mr. Das has also placed before us the judgment of Hon'ble Supreme Court in the case of S.P.Gupta and others Vs. President of India and others reported in AIR 1982 SC 149. Relying on this judgment Mr. Das argued that no privilege can be claimed by the Respondents Under Sections 123 and 124 of the Indian Evidence Act, 1872 as the Hon'ble Supreme Court have clearly laid down in the aforesaid judgment that 'Affairs of State' is limited to;

- 1) Security of State and
- 2) Foreign relations of the country.



Law is well settled, according to Mr. Das, that no privilege can now be claimed in the matter of production and inspection of the relevant documents on any ground other than the two mentioned above. Mr. Das took us through paragraphs-60, 65, 66, 81, 82, 85, 1157, 1184, 1189 and 1190 of the judgment. This is a momentous Hon'ble Supreme Court verdict in which the seven judge constitution Bench upheld by majority, validity of the transfer of Hon'ble K.B.N.Singh, Chief Justice of Patna High Court to the Madras High Court; validity of non-extension of the term of Hon'ble Shri S.N.Kumar, Additional Judge of the Delhi High Court and validity of the Circular of the Union Law Minister to all States dated 18th March, 1981. The Hon'ble Supreme Court have examined the various major issues involved in the case and other incidental legal aspects like privilege in the matter of production and inspection of documents. In paragraph 72 the Court has observed as follows:

"There is nothing sacrosanct about the immunity which is granted to documents because they belong to a certain class.

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Classimmunity is not absolute or inviolable in all circumstances. It is not a rule of law to be applied mechanically in all cases. The principle upon which class immunity is founded is that it would be contrary to public interest to disclose documents belonging to that class, because such disclosure would impair the proper functioning of the public service and this aspect of public interest ~~which~~ requires that justice shall not be denied to any one by withholding relevant evidence. This is a balancing task which has to be performed by the Court in all cases".

In paragraph 85 it has been mentioned:

"We are therefore, of the view that in the two groups of writ petitions which are before us the injury which would be caused to the public interest in administration of justice by nondisclosure of the correspondence between the Law Minister, ~~The~~ Chief Justice of Delhi and the Chief Justice of India and the relevant notings made by them in regard to nonappointment of S.N.Kumar and the correspondence between the Law Minister and the Government of India and the relevant notings made by them in regard to transfer of the Chief Justice of Patna, far outweighs the injury which may, if at all, be caused to the public interest by their disclosre and hence these documents were liable to be

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disclosed in response to the demand of the learned Counsel appearing on behalf of the petitioners and S.N.Kumar. These were the reasons for which we directed by our Order dated 16th October, 1991 that these documents be disclosed to the petitioners and S.N.Kumar."

Commenting on the provisions of Section 12 of the Indian Evidence Act Their Lordships in paragraph 848 have observed as follows:

"In my opinion, Section 123 must be construed on its own terms. Undoubtedly a century old provision enacted to some extent keeping in view the needs of Empire builders must change in the context of the Republican Government and the open society which we have set up. Undoubtedly there must be such affairs of the State involving security of the nation and Foreign Affairs where public interest requires that the disclosure should not be ordered. It is, however, equally well recognised that fair administration of justice is itself a matter of vital public interest".

After hearing the arguments on the question of privilege the Hon'ble Supreme Court directed the Government to submit the documents in respect of which privilege was claimed for its inspection. Those documents included the correspondence between the Chief Justice of the High Court of Delhi, the Chief Justice of India and

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the Minister of Law and Justice and some official notings relating to the question of reappointment of Shri S.N.Kumar as a judge of the High Court of Delhi. In this context paragraph-1187 will have to be read and this paragraph reads as follows:

"The above order was made as the documents in question had no concern with either the security of the State or with the diplomatic relations between our country and any Foreign country. They no doubt related to a 'High level' appointment, but it was felt by us that that fact by itself was not sufficient in the circumstances of the case to prevent the Court from directing the Government to produce the documents for its inspection before deciding the question of discovery".

In paragraph-1189 the Court have observed:

"Ours is an open Society which has a Govt. of the people, which has to be run according to the Constitution and the Laws. The expression affairs of State should, therefore, receive a very narrow meaning. Any claim for interpreting it with a wider connotation may expose Section 123 of the Evidence Act to be challenged as being unconstitutional".

The last two paragraphs taken together, in our opinion, contains the interpretation of Section 123 of the Indian Evidence Act and we cannot escape the conclusion that the

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Affairs of STATE would be limited to the national security and the diplomatic relations between our country and Foreign countries.

6. On the other hand, Mr. G.A.R. Dora the learned Counsel for the Respondent 2 averred that the file of the General Administration Department was not relevant only Revenue Department file is relevant for a proper appreciation of the case and the purpose will be served if the court alone see it. It is not necessary according to Mr. Dora for the applicant to see the files. Mr. K.C. Mohanty, the learned Government Advocate contended that this was not the stage when the applicant could be allowed to inspect the files. He may be allowed access to the files after the Disciplinary Proceedings had been concluded. Mr. Das however, did not agree with Mr. Dora and Mr. Mohanty and placed before us the judgment of the Principal Bench of the Central Administrative Tribunal reported in ATR 1986 CAT (PB)

B. S. Das



16( Shri P.Banerjee Vs. Union of India and others).

While dealing with the rights and desirability of the Tribunal to peruse the records of assessment made by the Members of the D.P.C. and the subsequent action taken by the UPSC recommending persons for appointment, the Tribunal have held in paragraph-9 of their judgment that

"When the validity of a recommendation cannot be judged without perusing the record, such record cannot be treated as one the confidentialities of which should be preserved. The Tribunal can not withhold such record from the parties likely to be affected by its decision.

In disclosing this material to the parties to the litigation, no prejudice would be caused to the State or any of the Officers concerned".

Mr. Das filed a written note on this issue on 22.4.1991 and on 24.4.1991 he has placed before us the judgment of the Ahmedabad Bench in the case of J.D.Tolia and another Vs. Union of India and others reported in ATR 1989(1) CAT 155. In that judgment the Ahmedabad Bench has examined the right of claiming privilege and the

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right of the petitioners to inspect the documents for which privilege is claimed. In paragraph 5 of the judgment the Bench has observed as follows:

"If the documents are ordered to be produced, they cannot be withheld from the petitioner because that would defeat the purpose of production. The satisfaction of the Tribunal is the result of testing the evidentiary value of the documents in which reliance has been placed. XX XX XX XX . In the case of Mr. Gangwani Vs. Union of India the Delhi Bench of this Tribunal rejected the claim of the privilege advanced for not producing a file for disclosure of its contents in which record of the assessment made by the members of the DPC and subsequent action taken by the UPSC was dealt with. It was observed that far from causing injury it would advance public interest and lend assurance to the public in general and the public servants in particular that they are being treated justly and fairly. No question of security of state is involved".

As has been observed by the Hon'ble Supreme Court in the judgment reported in AIR 1982 SC 149 contents of the documents can be disclosed to the applicant Under Section 123 of the Indian Evidence Act, 1872 if it will not in any way compromise the national security and affect diplomatic relations of the country

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with Foreign Governments. In regard to Section 124 of the Evidence Act their observation is that the Court has to interpret public interest balancing the need of the Department and the need of the Administration of justice. According to them administration of justice itself is public interest. We have gone through the two files produced by the Revenue Department and the General Administration Department. We have found nothing therein which would, even remotely, in any way compromise the security of the State or in any way affect our Country's Foreign relations. Agreeing with the Ahmedabad Bench of the Tribunal we hold that the satisfaction of the Tribunal is the result of testing the evidentiary value of the documents on which reliance has been placed and it would further the cause of natural justice and the interest of administration of justice if the applicant is allowed to inspect the two files which deal with the circumstances leading to his suspension. Allowing the applicant access to these documents, in our opinion would, far from causing injury, advance public

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interest and lend assurance to the public in general and the public servants in particular that they are being treated justly and fairly. as has been observed by the Principal Bench of this Tribunal in the case referred to above.

7. We therefore, allow the applicant to inspect these files. The inspection of the files should be done on 1st May, 1991 in the presence of the Registrar of this Bench during the Court hours. It is made clear that the applicant during the inspection may take notes but not copies of the notings or other materials in the file .

8. The M.A. 118 of 1991 is accordingly disposed of.

  
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MEMBER (JUDICIAL)



  
..... 30.4.91  
VICE- CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench, Cuttack; K. Mohanty.