

CHAPTER XX

Miscellaneous

355. (1) *Procedure to be followed when a Government servant is summoned by a court to produce official documents for the purpose of giving evidence.*

The law relating to the production of unpublished official records as evidence in courts, is contained in sections 123, 124 & 162 of the Indian Evidence Act, 1872 (Act 1 of 1872) which are reproduced below :—

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 No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State except with the permission of the officer at the head of the Deptt.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

“124. No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure”.

“162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to court notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court.

(1) The court, if it sees fit, may inspect the document unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence, and if the interpreter disobeys such direction he shall be held to have committed an offence under section 166 of the Indian Penal Code”.

(2) For the purposes of section 123 above, the expression.

“Officer at the head of Department concerned” has been held to mean the officer who is in control of the deptt. and in whose charge records of the department remain. The privilege should be claimed generally by the Minister-in-Charge, who is the political head of the department concerned. If he is not available, the Secretary of the Department, who is the departmental head should claim privilege. Such claim should always be made in the form of an affidavit.

(3) In respect of documents (1) emanating from the Government of India, or the State Government or which have formed the subject of correspondence with Government of India/State Government or (2) emanating from other Governments, whether foreign or members of the Commonwealth, the head of the department should obtain the consent of the Government of India or of the other State Government, as the case may be, through the usual official channels before giving permission to produce the documents in Court or giving evidence based on them unless the papers

are intended for publication or are of a purely formal or routine nature, in which case a reference to Govt. of India/the State Government may be dispensed with.

(4) In the case of documents other than those specified in paragraph 3 above, productions of documents should be withheld only when the public interest would be injured by their disclosure, or where disclosure would be injurious to national defence, or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service. The Courts have indicated the circumstances under which no such privilege should be claimed, e.g. privilege is not to be claimed on the mere ground that the documents are state documents or are official or are marked confidential or, if produced, would result in Parliamentary discussion or public criticism or would expose want of efficiency in the administration or tend to lay a particular deptt. of Government open to a claim for compensation. The mere fact that the head of the department does not wish the documents to be produced, is not adequate justification for objecting to their production. The Courts have, however, observed that refusal to produce documents relating to affairs of State implies that their production will be prejudicial to public interest. Consequently, the reasons for claiming privilege should invariably be given in an affidavit in form No. 1.

(5) These instructions apply equally to cases in which Government is a party to the suit. In such cases, much will depend on the legal advice as to the value of the documents, but before they are produced in Court, the considerations stated above must be borne in mind, and reference to Government of India/State Government made, when necessary.

(6) The Government employee who is to attend a Court as a witness with official documents should where permission under Section 123 has been withheld, be given an affidavit in form No. 1 duly signed by the Head of the Department concerned. He should produce it when he is called upon to give his evidence and should explain that he is not at liberty to produce the documents before the court, or to give any evidence derived from them. He should, however, take with him the papers which he has been summoned to produce and permit the court to see them if it so desires.

(7) The Government employee who is summoned to produce official documents in respect of which privilege under Section 124 is desired to be claimed, will make an affidavit in form No. II. When he is not attending the court himself to give evidence, he shall have it sent to the court alongwith the documents. The person through whom the documents are sent to court should submit the affidavit to the court, when called upon to produce the documents. He should take with him the documents which he has been called upon to produce but should not hand them over to the court unless the directs him to do so. They should not be shown to the opposite party.

(8) The head of the department should abstain from entering into correspondence with the presiding officer of the court concerned in regards to the grounds on which the documents have been called for. He should obey the Courts orders and should appear personally or arrange for the appearance of another officer in the Court concerned, with the documents and act as indicated in paragraph 6 and 7 above, and produce the necessary affidavit in case privilege is claimed.

FORM I.

IN THE COURT OF

Suit No. of 19

I,*
 hereby solemnly affirm and state as follows :—
 A Summons bearing No. dated issued by
 the Court of in suit No. of
 19 Vs. has been received
 in the Department of on 19
 requiring production in the said Court on 19 of do-
 cuments stated below. I, as the head of Department of am
 in control of, and incharge of, its records. I have carefully considered the relevant
 documents and have come to the conclusion that they are unpublished official
 records relating to affairs of State and their disclosure will be prejudicial to public
 interest for the following reasons :—

LIST OF DOCUMENTS SUMMONED

I do not, therefore, give permission to anyone under section 123 of the
 Indian Evidence Act, 1872 to produce the said documents or to give any evidence
 derived therefrom.

Solemnly at this day of 19

Name and designation of the
 officer at the head of the Deptt.

SWORN BEFORE ME

FORM OF AFFIDVAIT NO. II

IN THE COURT OF

SUIT NO. of 19.

I, * do hereby solemnly affirm and state as
 follows, :—

A summons bearing no. dated
 issued by the Court of in suit No. of
 19 (..... Versus) has been
 served on me on 19, of the documents stated below :—
 I have carefully considered them and have come to the conclusion that they
 contain communications made in Official confidence and I consider that the public
 interest would suffer by their disclosure for the following reasons :—

LIST OF DOCUMENTS SOMMONED

I, therefore, claim privilege under section 124 of the Indian Evidence Act,
 1872.

Solemnly affirmed at
 day of 19

Here insert the name, designation and add-
 ress of the person making the affidavit.

SWORN BEFORE ME

356. *Reference to local officers for report.*—It is the express wish of Government that Deputy Commissioners should not be burdened with clerical work in order that they may have time for their more important duties and Secretaries to Government and Heads of Departments etc. should refrain from asking district officers for informations or reports unless they are absolutely essential. While Commissioners and Deputy Commissioners should be freely consulted about questions of policy or particular cases affecting their charge, care should be taken to see that references are not made to them, including references on proposals for legislation on which opinions are invited, unless it is very necessary to have their views. Where a reference is necessary, reasonable time depending on the nature of the case, should be given for a reply, unless the case is immediate or very urgent.

In order to ensure that the above orders are observed, no reference to a Commissioner or Deputy Commissioner, except in purely routine matters, should be made without the approval of a Deputy/Under Secretary. Important references should receive the approval of a Secretary to Government or the Head of Department concerned, unless they are immediate and the approval of the Secretary or the Head of Department cannot be obtained without delay.

Commissioners of Divisions should bring to the notice of the Chief Secretary by demi-official Letter, cases in which unnecessary references are made to them or Deputy Commissioners or inadequate time is given for the disposal of necessary references.

These instructions will also apply *mutatis mutandis* to references by the Secretariat and Heads of Departments to other Administrative and Executive officers.

357. *Confidential Reports Files.*—(1) The Confidential Reports Files of all I.A.S. and H.C.S. officers are prepared and kept by the Services Branch, which is responsible for their safe and confidential custody. Confidential Reports Files in respect of I.A.S. officers are to be maintained in accordance with the provisions of All India Services (Confidential Rolls) Rules, 1970 and the guidelines issued by the Government of India from time to time, while in respect of H.C.S. officers, such files are to be maintained in the manner indicated in the Consolidated instructions regarding Confidential Reports issued by the Haryana Government.

(2) Confidential reports on the work and conduct of officers. All such reports should be placed in the A.C.R. files of the officers concerned after the Chief Secretary in respect of I.A.S. officers and Joint Secretary/Deputy Secretary as the case may be, in respect of H.C.S. officers has seen them.

(3) Consolidated instructions regarding Annual Confidential Reports have been issued by the Haryana Government which embody all instructions about confidential reports such as procedure to be followed in maintenance of A.C.R. files, communication of adverse remarks, nature of documents which can be placed in A.C.R. files etc., Instructions issued on this subject from time to time should be strictly followed.

358. *Naming of Places or Institutions after prominent officials.*—There are institutions doubtless of great public value, and the names given to them commemorate the interest which prominent officials took in their foundation or the debt which the people of the locality owe to their work and public spirit. The practice is, however, obviously open to abuse and likely, if unregulated to be embarrassing to the modesty of some and to afford opportunities for self-advertisement to others. No

official of Government should therefore, allow his name to be associated with any public or semi-public place or institution, without the prior approval of Government.

359. *Treatment of mortgage bonds regarding advances to officers for purchase of conveyances.*—Mortgage bonds executed by officers purchasing conveyances with the aid of advances granted to them by Government, should be kept, in the safe custody of the administrative branch concerned in cases in which the advance is sanctioned by the State Government. Intimation should be sent to the Accountant-General Haryana, that the bond has been executed by the officer, concerned. When the advance has been fully repaid, the bond should be returned to the officer concerned, duly cancelled after obtaining from the Accountant General's officer a certificate as to complete repayment of the advance alongwith interest. (Proceeding H. Judicial). 1925, B File No. 222)

360. *Terms and conditions regarding deputation of officials sent abroad.*—To avoid any embarrassment to the Indian Missions abroad, the terms and conditions of officers deputed abroad should be clearly specified, in particular, the class of air passage to which he is entitled and whether the cost of passages for accompanying members of his family is also payable by Government. While sanctioning deputation of officers sent abroad on official business information on the following points should, therefore, invariably be given in clear and unambiguous terms:—

- (i) Pay, allowances and increments, if any, falling due during the period of deputation.
- (ii) Service to which the officer belongs, indicating whether it corresponds to Central Service Class I or II or an All India Service.
- (iii) Class of air passage admissible.
- (iv) Class of rail accommodation admissible.
- (v) Duration of stay in the foreign country as visualized at the time of deputation.
- (vi) Controlling authority to whom direct reference may be made by the Mission concerned in case of any doubts or for clarification.
- (vii) Whether Government is responsible for the passage and expenses of any of the members of the officer's family. Negative reply should also be given.

361. *Visits of Indians to Foreign Countries.*—(1) The Government of India are interested in the visits abroad of the persons falling under the following classes :—

- (i) Officials on duty.
- (ii) Non-officials sponsored by Government.
- (iii) Non-officials whose visits should be within the knowledge of the local authorities concerned.
- (iv) Official and Semi-Official delegations.

(2) The Government of India should, therefore, invariably be informed of the visit by persons belonging to any of the above categories sufficiently in advance, in order to ensure that the foreign posts concerned have timely intimation of the intended visit and are in a position to arrange such facilities as may be required. Each communication to the Government of India in this respect should clearly indicate :—

- (a) Whether it should be treated for information only.
- (b) Whether, and if so, what specified facilities are required e.g. :—,
 - (i) receiving the visitors on arrival with transport;
 - (ii) reservation of hotel accommodation and any payment for board and lodging;
 - (iii) arranging special transport for the duration of visits; and
 - (iv) payment of advances from funds of Indian Missions abroad;
- (c) Tentative time-table of the visit, particularly the date of arrival.

(All alterations in these details should be intimated as soon as possible).

(3) It is emphasized that official communications to the Indian Diplomatic and Consular posts abroad can be addressed exclusively by the Government of India. Telegraphic messages notifying alteration of programme from the visitors in transit may, however, be sent direct to Missions concerned.

(4) If on arrival in a foreign country a visitor wishes to go to some other country or to return to India, the responsibility for all official arrangements in such an event will evolve on the Indian Mission in whose jurisdiction he might be living at that time. If there is no Indian Mission in the Country where a visitor may be a temporary resident, such arrangements may be referred either to the nearest Indian Embassy (or legation) or to the Government of India. The Indian Mission concerned should invariably inform all other interested—Missions sufficiently in advance of the projected visit with such relevant particulars and requests for facilities as may be deemed necessary. The Missions abroad will, at their discretion, consult the Government of India on any specified issue. It should be emphasized that our Missions abroad may not be able to provide foreign exchange in the absence of a special authorization from the Government of India.

(5) Official programmes for travel and public engagements should be adhered to as much as possible. Should alteration be un-avoidable, prior information to all concerned should be sent at the earliest possible opportunity.

(6) Certain visits may require simple information from the Indian Representatives abroad and others may be in need of facilities such as accommodation, passport, etc. from them. In their own interests as well as a matter of courtesy to the Mission concerned, the Indian visitors of any of the classes mentioned in sub-para (1) above, should be advised that, on arrival in foreign countries, they should call on the appropriate Indian Representatives and keep them informed