98-2121-8783

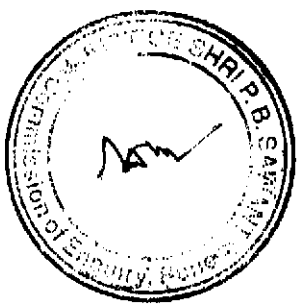
REPORT

JUSTICE P.B.SAWANT
COMMISSION OF INQUIRY

Commission of Inquiry
appointed by
the Government of Maharashtra
vide Notification dated
1st September, 2003

Date of the Report	22nd February, 2005
Date of Submission	23rd February, 2005

INDEX



CHAPTER I

INTRODUCTION

By a Notification dated 1st September, 2003, the Government had appointed the present Commission under the Commissions of Inquiry Act, 1952, to inquire into the allegations of corrupt practices and maladministration into matters specified in **Annexures - A and B** of the said Notification against (i) Dr. Shri. Padmasinh Patil, Minister (Irrigation), (ii) Shri. Sureshdada Jain, Minister (Food and Civil Supplies), (iii) Shri. Nawab Malik, Minister of State (Housing), (iv) Dr. Shri. Vijaykumar Gavit, Minister of State (General Administration) and (v) Shri. Anna Hajare, and to make report to the Government.

2) The alleged corrupt practices and maladministration by:-

(i) Dr. Shri. Padmasinh Patil were in the administration of (a) Osmanabad District Central Co-operative Bank, (b) Terna Sahakari Sakhar Karkhana, Osmanabad and (c) Terna Public Trust, Terna Nagar, District Osmanabad,

(ii) Shri. Sureshdada Jain, in the administration of (a) Jalgaon District Central Co-operative Bank, (b) Jalgaon

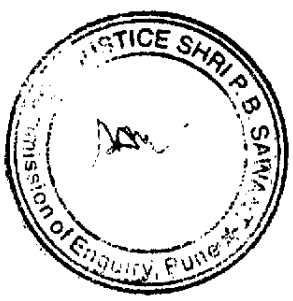
Municipal Council and (c) Jalgaon Khandesh Bhookamp Sahayata Nidhi (Gujarat) Trust,

(iii) Shri. Nawab Malik, in the matter of re-development of property known as "Jariwala Chawl", T.H. Kataria Marg, Mahim, Mumbai,

(iv) Dr. Shri. Vijaykumar Gavit, in the matter of irregularities found in (a) Sanjay Gandhi Niradhar Yojana, (b) Indira Awas Yojana and (c) Indira Gandhi Rashtriya Vruddhapakalin Yojana in District Nandurbar, and

(v) Shri. Anna Hajare in the administration of (a) Hind Swaraj Trust, Pune, (b) Sant Yadavbaba Shikshan Prasarak Mandal, Ralegan-Siddhi, (c) Bhrashtachar Virodhi Jana Andolan, Ralegan-Shddhi, (d) Parner Taluka Shikshan Prasarak Mandal, Ralegan-Siddhi, (e) World Water Institute, Pune, (f) Sainik Bank - Parner Taluka Sainik Sahakari Bank Ltd. Parner, District Ahmednagar, (g) Adarsh Gramin Patsansatha, Ralegan-Siddhi, (h) Krishna Pani Puravatha Yojana Sahakari Sanstha, Ralegan-Siddhi, (i) Swami Anna Hajare Trust, Ralegan-Siddhi, and (j) Swami Vivekananda Krutadnyata Nidhi, Ralegan-Siddhi.

3) Ultimately, Shri. Sureshdada Jain, who had made the allegations in respect of corrupt practices and maladministration in the ten institutions of Shri. Anna Hajare,

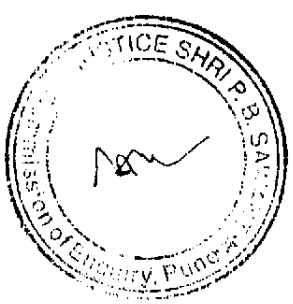


confined himself to only four institutions viz. (a) Hind Swaraj Trust, Pune, (b) Sant Yadavbaba Shikshan Prasarak Mandal, (c) Bhrashtachar Virodhi Janandolan and (d) Krishna Pani Purvatha Yojana Sahakari Sanstha, and gave up his allegations in respect of the remaining six institutions.

4) Similarly, as regards the allegations made by Shri. Anna Hajare against Dr. Shri. Vijaykumar Gavit, they had to be confined only to two Yojanas viz. (a) Sanjay Gandhi Niradhar Yojana and (b) Indira Gandhi Rashtriya Vruddhopakalin Yojana, which was by consent of the parties correctly understood as "Rashtriya Vridhapakalin Yojana". There was no such "Yojana" as Indira Awas Yojana or Indira Gandhi Rashtriya Vruddhapakalin Yojana.

5) The Commission thus, inquired into the alleged corrupt practices and maladministration, in all, in ten institutions/organisations, one government department and two government schemes or yojanas.

6) The Commission was in search of suitable premises for holding its inquiry, and had visited the premises of the Pune Agricultural College, Pune on 18th September, 2003. That time, on behalf of the Government, the Collector showed the Commission, Dr. Shirname Hall, which was for various reasons,



not suitable, and instead, the Commission suggested to the Government to make available Prof. Phadtare Hall, which is in the same compound with appropriate changes. This was agreed to. However, in the meanwhile, a preliminary meeting was held in Dr. Shirname Hall on 22nd September, 2003. The meeting was attended by all the ministers, except Shri. Nawab Malik, who was abroad at the time, and by Shri. Anna Hajare, and their counsel. After discussion, the Commission gave the following directions:-

(i) Parties to withdraw the cases filed by them against each other in courts or give an undertaking that the concerned parties will not claim any privilege on that count while giving answers or producing documents.

(ii) The place of inquiry will be at Phadtare Hall in the compound of the Agricultural College, Pune.

(iii) Parties will submit specific statements of allegations to the Commission in triplicate. Before giving the copies to the Commission, the parties will give copies directly to each other. An endorsement of the other side to that effect, should appear on the copy of the Commission.

(iv) Advocates for the parties stated that they would give details of all charges made by them to the other side and

the Commission, with a list of documents and witnesses on or before 29th September, 2003.

(v) The replies of the respective parties to the charges will be presented by them to the Commission on or before 7th October, 2003, by following the same procedure.

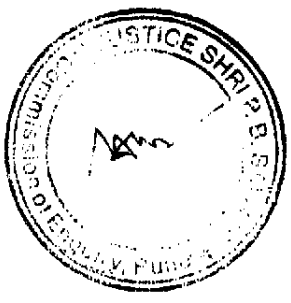
(vi) Procedure to be followed in the inquiry will be investigatory. The Commission will have powers to cross-examine the witnesses and call for witnesses and documents on its own.

(vii) In the absence of the rules made by the State Government, the Commission will follow its own procedure consistent with the principles of natural justice. Where necessary, the Commission may take guidance from the Central Rules.

(viii) English and Marathi languages will be used in conducting the inquiry.

(ix) Working hours will be between 11.00 A.M. to 2.00 P.M. and 2.30 P.M. to 6.00 P.M. having a break between 2.00 P.M. to 2.30 P.M.

(x) The work will go on from day to day, and even on Saturdays, with some exceptions.



(xi) Copies of depositions of the witnesses will be given on the same day and grammatical corrections, if any, should be suggested, on the next day.

(xii) All communications will be made by fax or on telephone.

(xiii) Inquiry will be open for public, but T.V. cameras will not be allowed.

(xiv) The order in which the charges will be investigated will as far as possible be in the order in which they appear in the terms of reference.

(xv) The examination-in-chief of the witnesses may be on affidavit and the cross-examination will be conducted orally.

(xvi) The next sitting of the Commission will be on 9.10.2003.

7) Shri. Suresh Jain and Shri. Hajare, instead of withdrawing the cases filed by them against each other, gave in writing the undertaking that they would not claim privilege while answering the questions or producing documents.

8) As stated earlier, the Commission approved of Prof. Phadtare Hall, in the compound of the Agricultural College, Pune, provided suitable changes were made in the same. The Commission also requested the representatives of the

Government viz. the Collector and the Executive Engineer to ready the hall in all respects as early as possible. It is to the credit of the Executive Engineer Shri. L. S. Joshi that he completed the said Hall with all the suggested improvements within record time, by deploying a suitable agency for the purpose, and made it available to the Commission sometime before 21st October, 2003. Before that on 16th September, 2003, Shri. G.T. Wategaonkar was appointed as Secretary of the Commission and Shri. D. S. Bhonde, Advocate was appointed as the counsel of the Commission, on the recommendations of the Commission.

9) The oral evidence commenced before the Commission from 21st October, 2003 and ended on 24th December, 2004 with breaks in between, at the instance of one or the other party. The evidence was actually recorded on 206 working days.

10) With the consent of the parties, the inquiries were conducted in the following order:-

(i) Shri. Nawab Malik,

(ii) Dr. Shri. Padamsinh Patil,

(iii) Shri. Anna Hajare,

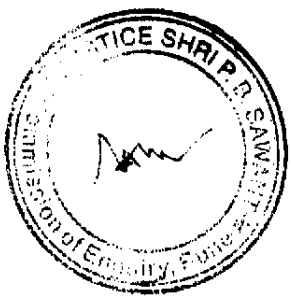
(iv) Shri. Sureshdada Jain, and

(v) Dr. Shri. Vijaykumar Gavit.

11) The Commission together examined 119 witnesses whose oral deposition ran into 1,561 pages. In all 980 documents came on record together consisting of 43,082 pages.

12) The findings are recorded issue-wise in the inquiry against Shri. Nawab Malik, while they are recorded subject-wise in all other inquiries.

13) On 11.10.2003 Shri. P. Narayan, counsel for Dr. Padamsingh Patil, submitted an application, raising three points. The first point was regarding the procedure to be followed by the Commission. The second point related to the interpretation of Section 8B of the Commission of Inquiry Act, which requires that before issuing notice under that section, the Commission must satisfy itself that there was a prima facie case made out against the person concerned and since the Commission had not recorded such satisfaction, the notice issued to Dr. Padamsinh Patil was invalid. The third point was that a public notice under Rule 5 of the Central Rules should be issued for the information of the members of the public who may be acquainted with the subject-matter of the inquiry, and may furnish to the Commission statements relating to such matters as may be specified in the notification. This application



was rejected by pointing out that the procedure was already fixed by the consent of the parties in the first meeting held by the Commission on 22.9.2003. As regards the provisions of section 8B, they were not applicable for summoning the persons against whom the inquiry is instituted. They were applicable only while summoning the persons who are not parties to the proceedings but against whom the finding may be recorded by the Commission. As regards the provisions of Rule 5 of the Central Rules, the notification appointing the Commission had laid down the jurisdiction of the Commission confining the inquiry only to the allegations of corrupt practices and maladministration made by Shri. Hajare and by Shri. Jain against Shri. Hajare. The notification did not say that the allegations of corrupt practices and maladministration by "any person" were to be inquired into and hence even assuming that the said Rule 5 of the Central Rules applied, it was not attracted in the present case. This was, of course, apart from the fact that since the State Government had made no rules, the Commission was, as decided in the meeting of 22.9.2003, free to follow its own procedure.

14) On 15th March, 2004, Shri. Hajare made a written complaint that his witnesses were being threatened by Dr.

Padamsinh Patil and his men, and they were therefore unable to come before the Commission to depose. He further pointed out in the complaint, that one Mr. Balasaheb Patil, a director of the Factory, had filed a criminal complaint against one of his witnesses Shri. Magar, in the Court of the Judicial Magistrate, First Class, Pune for giving allegedly false evidence. He, therefore, requested that the Commission should take proceedings for Contempt of Court against Dr. Padamsinh Patil.

15) On 16th March, 2004 Shri. Hajare's lawyer, Shri. Arjun Patil filed a written complaint before the Commission complaining of threats and abuses given to him by Dr. Padamsinh Patil himself, in the Commission's premises and requested the Commission to take necessary action against Dr. Padamsinh Patil. The actual abuses uttered by Dr. Patil were unmentionable, and hence, Shri. Arjun Patil was directed to write out the same. When the written abuses were received, they were kept in a sealed cover. On 18th March, 2004 the complaint by Shri. Hajare as well as by his lawyer Shri. Arjun Patil were forwarded to the Chief Minister of the State along with a Commission's letter, requesting for a State Amendment to the Act to give the Commission the powers of the Contempt of Court and also incorporating in the said letter, the actual

amendment to be made. It was pointed out that the Commission's work was being obstructed on account of the alleged threats and obstructions to the witnesses and the lawyer as alleged in the applications of both Shri. Hajare and his lawyer, and since the Commission had no powers to take Contempt Proceedings against the guilty persons, the Commission found itself helpless. There is no reply from the Chief Minister to the said letter, till this date.

16) On 31st March, 2004, Shri. Hajare, by a written communication, withdrew from the proceedings stating therein that he was doing so in view of the said obstructions to his witnesses and lawyer. In the application, he stated that he would however participate in the Commission's proceedings to answer the allegations against his institutions. The communication was signed by both, Shri. Anna Hajare and his lawyer Shri. Arjun Patil, who also simultaneously withdrew from the proceedings. On the same day, Shri. Hajare's witnesses viz. Shri. Vilas Dattatraya Pawar, Shri. Laxman Raghu Shirsat, Shri. Anand Nandlal Tapade and Shri. Balasaheb Sahebrao Patil, by separate communications, complained to the Commission that they were being threatened by Dr. Patil and his men, and

informed the Commission that they were unable to come before the Commission to depose.

17) Notwithstanding the aforesaid withdrawal by Shri. Hajare and his lawyer from the proceedings of the Commission, the Commission continued its work.

18) Shri. Kerba Gadhave, originally appearing as one of the witnesses of Shri. Hajare against Dr. Padamsinh Patil, and who was acquainted with the relevant facts undertook to conduct the further proceedings against Dr. Patil and his institutions, and he was permitted to do so. Out of four witnesses, who had given the written complaints of the threats from Dr. Patil/his men, Shri. Balasaheb Sahebrao Patil, Shri. Anand Nandlal Tapade, Shri. Laxman Raghu Shirsat and Shri. Vilas Dattatraya Pawar, were summoned by the Commission to depose. However, only Shri. Vilas Pawar attended to complete his deposition.

19) Shri. Hajare appeared before the Commission from 21st June, 2004 to answer charges against his institutions.

20) On 6th December, 2004 while Shri. Suresh Jain was under Examination by the Commission's counsel, he left the Commission in defiance of the orders of the Commission, stating that he would be available for examination only after 24th

December, 2004. A bailable warrant was issued against him to secure his presence. Before the warrant could be executed, however, on 9th December, 2004, he appeared before the Commission and continued his deposition. After due notice, he was fined for the said misdemeanour, in the maximum amount of Rs.500/- permissible under the law. A complaint is also lodged against him under section 10-A of the Commissions of Inquiry Act, in the High Court for bringing the Commission in disrepute on account of the said misconduct.

21) After recording the evidence in each case, the parties were given permission to present written submissions as well as to make oral submissions. Accordingly, the parties presented both, their written contentions and oral arguments.

22) The Commission had in the beginning the assistance of Shri. D. S. Bhonde, Advocate as a counsel for the Commission and of Shri. Ajay Gadegaonkar as the assistant counsel. On account of his failing health, however, Shri. Bhonde could not attend the proceedings of the Commission beyond the first meeting of the Commission held on 22nd September, 2003. Shri. Ajay Gadegaonkar also could not attend the proceedings of the Commission. The Commission hence got appointed Sarvashri Vijay Nahar as the Additional Counsel and Sarvashri Shrichand

Nahar and Rohan Nahar as Assistant Counsel. The Commission received able assistance from these counsel.

23) Shri. D. S. Bhonde, Advocate unfortunately, ultimately succumbed to his illness on 3rd December, 2004.

24) The Commission was provided with one English Stenographer and three junior clerks, and four peons.

25) In the inquiry against Dr. Shri. Padamsinh Patil, Shri. P. Narayan, Advocate appeared for him and Shri. Arjun Patil, Advocate appeared for Shri. Anna Hajare, who withdrew in between as stated above.

In the inquiry against Shri. Suresh Jain, Shri. S. K. Jain, Advocate appeared for him and Shri. P. P. Paralikar, Advocate appeared for Shri. Anna Hajare.

In the inquiry against Shri. Nawab Malik, Shri. Nilesh Pavaskar, Advoate appeared for him and Sarvashri. C. K. Marathe, Arjun Patil and A.V. Joshi, Advocates appeared for Shri. Anna Hajare.

In the inquiry against Dr. Shri. Vijaykumar Gavit, Shri. Shivraj Kadam, Advocate appeared for him and Shri. V. B. Jadhav, Advocate appeared for Shri. Anna Hajare.

In the inquiry against Shri. Anna Hajare, Sarvashri. P. P. Paralikar and P.S. Kulkarni, Advocates appeared for him

and Shri. Manoj Wadekar, Advocate appeared for Shri. Suresh Jain.

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CHAPTER II

CORRUPTION AND MALADMINISTRATION IN PUBLIC INSTITUTIONS

The public institutions will include not only the government and semi-government offices/institutions, the judiciary and the legislatures, but also public undertakings and all other public organisations whether registered as trusts, societies, companies or corporations under the relevant statutes or the government orders.

2) Corruption is only a species of maladministration, which besides corruption, consists of the negligence, the lack of supervision, ignoring grievances and complaints against administration, carelessness, and waste and inefficiency, among others. Broadly speaking, the improper conduct of the affairs of a public institution, adversely affecting the interests of the public or the beneficiaries will amount to maladministration.

3) The broader connotation of the word corruption varies with the office held by the person who is accused of the corrupt act. Higher the power and its reach and responsibility, the more the acts which come under the scanner of public accountability. It is not only the acts done in return for bribe in

whatever form it is received, but the acts of favouritism, of wielding influence, of pressurising and inducing others including the subordinates to do or refrain from doing acts, of showing partiality and preference, of ignoring the law and the rules, of side-tracking the usual practice and procedure for unfair purpose, of using the discretionary power arbitrarily and selectively to promote partisan interests, of acting under the influence of or to oblige, third parties or for extraneous considerations, of conniving at irregularities and illegalities or of condoning them, of acting in excess of power, or of not exercising the requisite power for improper reasons, will all among others, amount to the acts of corruption. It is not possible to define corruption accurately or to enumerate all acts, which may amount to corruption. The human ingenuity is boundless, and the social life is dynamic. With the growth of civilisation and its complexities, the social evils also grow and their nature and character acquire varied dimensions. At best, a broad definition of corruption may be attempted to include all acts or omissions done to benefit oneself or those in whom one is interested, and all acts or omissions done purposefully to injure the interests of one's adversaries.

4) This is not the first time that an inquiry is held under the Commission of Inquiry Act, against the Ministers of a Government. In the past, both the central and the state Ministers had to face not only the formal inquiries under the Act but also the informal inquiries, both conducted by the Judges. An unusual feature of the present inquiry is that a social activist and his institutions are also a subject matter of the inquiry. The inquiries so far held have evolved certain principles by which the corrupt acts and omissions on the part of the Ministers, have to be judged. In the process, they have also laid down the norms and standards of conduct for all persons in public life. The broad definitions of maladministration and corruption and some of their obvious instances pointed out above will apply to all the public institutions and to the holders of all the public offices with varying degrees of culpability depending on the power wielded and the responsibility shouldered by the concerned persons in the institutions. It appears that for the last some decades now, a tribe is growing fast which looks upon the public office as a source of pelf and power and unabashedly uses it for the same. Some of them have become bold enough not only to defy the law, but also to make it a norm of their public life. They have come to believe that they are above law,

and the public office confers on them the power to undermine it. Unless this arrogance of power is checked in its track, the disease may spread and devour the rule of law itself.

Democracy and Citizens

5) A serious note has also to be taken of a pernicious theory, which is sought to be advanced by some. Since the present electoral system needs huge expenditure to win elections, corruption, at least to some extent, has to be condoned, and so also favouritism for nursing the constituency. It is argued that both should therefore be treated as a necessary evil and a part of the game. Apart from the fact that both corruption and favouritism are against law and ethics, this theory ignores that the Ministers and the like, hold the public office not for their constituencies alone, but for the people at large. Today, officially some funds are placed at the disposal of all the legislators for the development of their constituencies. That itself is a questionable measure. But the Ministers cannot claim any additional benefit for themselves. If this theory is accepted, while a Minister by virtue of his office may indulge in corruption and favouritism, others cannot. That negates the very principle of equality, which the basis of democracy. The theory is both perverse and dangerous, besides being both

legally and morally indefensible. That such a philistine theory should have been advocated, is itself an indication of the extent of the downfall in our public life. On the other hand, the remedy for the present expensive electoral system is to devise an alternative system, and not to cater to or to condone the corrupt practices. The people must realise that they cannot and should not expect anything in return for voting for a particular person other than what they may share with others as citizens. That will go a long way in making the public life clean and safe for democracy.

6) There is no doubt that the participation in elections is not the end-all of the citizens' role in democracy. The mere fact that the citizens have the power to change the government or to replace their representative by another in the next election, does not prevent them from exercising their other democratic rights during the period between the two elections. It is a mistake to believe that the only duty of the citizens in the democratic governance is to exercise their right to vote. The right to vote is only one of the democratic rights of the citizens. The citizens have a fundamental right to participate in the day to day governance of the society. The mode and manner of such participation may vary and may include all peaceful

activities from petitioning to the government to taking out processions to register protests or to demand particular actions. The citizens may also undertake constructive activities, with or without the assistance of the government to improve the conditions and quality of the social life. Both the agitational and the constructive activities have become necessary in the present democratic societies, since the so-called democratic societies have a limited democracy and that too only in their political life. Beyond the right to vote and the right to contest in the elections, the political democracy confers no other right. In the absence of the social and economic democracy, even the rights to elect and to get elected remain on paper for a majority of the people. With the enormous social and economic inequalities which are growing everyday, the right to vote itself may be manipulated, while the right to contest elections has become the preserve of the wealthy few. Thus, the equality, which is the basis of democracy, does not exist even in the formal political process.

7) This is because the so-called democracy as has been practised, has made no change to the class-structure of the society. On the other hand, it has deepened and widened the class distinctions. The ruling class is not interested in bringing

about the social and economic democracy. On the other hand, since it can survive and thrive only on social and economic inequalities, it is interested in perpetuating them. Hence, the work by the civil organisations aimed at reducing the inequalities and their harsh social consequences, becomes all the more necessary.

The agitational activities have however to be carried on by observing certain norms. Not only have they to be peaceful, but also legal. A care has also to be taken to see that they do not lead to anti-social activities or become extra-constitutional centres of power. Such a development will itself encourage lawlessness and spell out the end of the rule of law. The mode of agitation has further to vary according to its object and the social conditions obtaining at the time. Else, it will not only not achieve its object but will prove counter-productive. It has to be remembered that the agitational activities also constitute a social power, which is as much liable to be abused as the political power. When the social power is used irresponsibly, or to subvert the constitutional authority, it is hardly distinguishable from terror.

8) When instead of the system, the individuals are targeted by the public agitation, several untoward

consequences follow. As the present inquiry has revealed, while making the allegations of corruption, the complainant Shri. Hajare relies exclusively on the information supplied to him by his workers or on the contents of the representations made to him by the discontented. The information thus made available may not all be disinterested and may be motivated by various considerations, including personal, political and corrupt. In any case, such information coming from whatever source it may, has to be verified at least by giving an opportunity to the person against whom the complaint is made. This is an elementary precaution which has to be taken before making the individual a target of agitation.

9) As has been admitted by Shri. Hajare, the persons against whom he receives complaints, are not even intimated by him about them. They have, therefore, no opportunity to reply to the charges in the complaints. Shri. Hajare gave two reasons for dispensing with the said basic requirement viz. that his Andolan has no funds to call for the explanations from the concerned individuals, and secondly, his team of lawyers clears the complaints before the agitation is started. The first reason is both strange and indefensible, while the second is as much unjustified. If the movement against corruption, which he has

started, does not have sufficient funds even for the postal correspondence with the persons concerned, certainly he cannot make the targeted individuals suffer on that account. It is further not his case that even his lawyers give an opportunity to the persons concerned to explain the charges against them before they clear the complaints for agitation. It must be realised that when persons like Shri. Hajare who have come to be respected by the society on account of their laudable work in other fields, publicly accuse any person for his misdemeanour, the people come to believe it intrinsically, and the person concerned earns a social odium for life-time, even if later he comes to be cleared of the charges. There have been cases where persons have been victimised either by public or private complaints, at the strategic moments in their life and career. The blackmailers, in particular, take advantage of such situation. The adequate precautions, which even otherwise are a must, become all the more necessary in such movements. The social power should not become or allowed to become an engine of oppression of the innocent.

The usefulness of the inquiries

10) The genesis of the Commission of Public Inquiry Act lies in the need for an instrument in the hands of the people to

ensure accountability of those who are entrusted with the public power, for their acts and omissions. In the representative democracies of the present day, where the day to day affairs of the society have to be carried on by the representatives of the people, with practically no machinery to control or supervise their activity, such enactments provide a welcome measure of relief to the people to redress their grievances. The very existence of such machinery has a salutary effect on those who wield power and expend public funds. The inquiries held under such enactments have deterrent and wider repercussions beyond the individuals and the institutions concerned and the transactions and the actors involved in them. Others are also put on notice and guard, and take precautions while managing their institutions.

11) This, however, presumes that the enquiring authority is able to do its job without let or hindrance. The present inquiry-proceedings have brought to the fore the weaknesses in the Act in this respect. The Act does not confer on the enquiring authority the power similar to that of the Contempt of Court. This lacuna emboldened some to threaten the witnesses and the lawyer of the opposite side, if the allegations made in that behalf are to be believed; while in yet

another case, a party to the proceeding defied the order of the Commission. These incidents highlight the need to empower the Commission appointed under the Act, to take action for contempt, against the guilty parties. The effectiveness of the inquiries also depends on the promptitude with which the action is taken on the inquiry-report.

The principles applied for determining the guilt

12) The principles, which are applied in the present case for holding the concerned persons guilty of corruption and /or maladministration, were evolved by the Commissions which have held inquiries so far in similar cases. The expression "corruption" is not to be construed narrowly in such matters but has to be understood in a wider sense. There may be no proof of the actual bribe received by the individual concerned. It is enough, if it is shown that the acts are motivated by oblique or improper motives or by extraneous considerations. Favouritism is also one form of corruption. The conferment of a benefit or advantage on another showing patent partiality, the repeated favour to a particular person or persons, and favours to undeserving persons also amount to the corrupt acts. Those entrusted with the public power have to act conscientiously, fairly and strictly according to the code of ethics. The

conclusions drawn in the present cases, are based on the principles discussed above.

13) Unfortunately neither the people nor those who hold public offices are aware of the wider definitions of maladministration and corruption discussed above. It is necessary that they are acquainted with them. It is also necessary to evolve a suitable, prompt and effective mechanism to deal with the complaints against such acts. That will go a long way in curing the present malfunctioning of our public institutions and in curbing the abuse of power.

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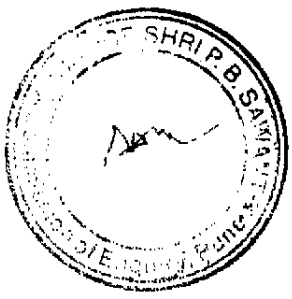
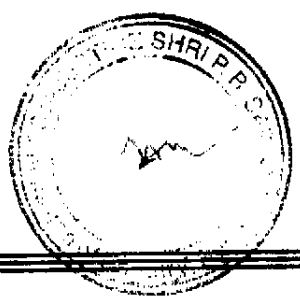


CHAPTER III

ALLEGATIONS AGAINST DR. SHRI. PADAMSINH PATIL



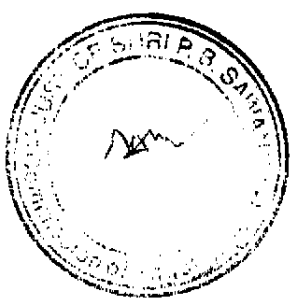
CHAPTER III

ALLEGATIONS AGAINST DR. PADMASINH PATIL

The allegations of corruption and maladministration against Dr. Padmasinh Patil, Minister (Irrigation) are in connection with three institutions, namely, Terna Sahakari Sakhar Karkhana (hereinafter referred to as the Factory), Osmanabad District Central Co-operative Bank (hereinafter referred to as the Bank) and Terna Public Trust (hereinafter referred to as the Trust).

2) The evidence shows that Dr. Patil was in direct control of the Factory and the Trust, whereas his cousin brother Shri. Pawanraje Nimbalkar was in control of the Bank.

3) To appreciate the allegations against Dr. Patil in respect of the three institutions, it is necessary to note that as far as the Factory is concerned, Dr.Patil was its director since 1978 and its Chairman right from 12.10.1995 until 11.7.2002. He was elected as a member of the Maharashtra Legislative Assembly in 1978 and continued to be the M.L.A. till date. He became Minister of the State of Maharashtra in 1978 and continued to be so till the new ministry was formed in 2004,



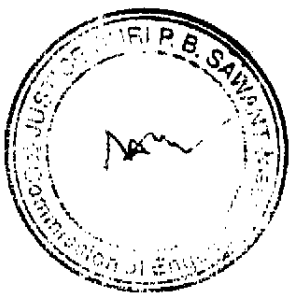
except for the period 1995 to 1999, when the present opposition political party was in power. He is a member of the Nationalist Congress Party (NCP) since its formation in 1999, and before that he was in the Indian National Congress.

4) As regards the Bank, his brother Shri. Pawanraje was its Chairman since 27.11.1996 till 7.5.2002 when its Board of Directors was superseded. It has to be mentioned here that Shri. Pawanraje has been a Director of the Factory since 1995.

5) As far as the Trust is concerned, it was established in 1980, and Dr. Patil has been its lifetime Chairman since its inception and continues to be so till date. Dr. Patil's wife and two sons became the lifetime trustees later and they continue to be so till date.

A) **TERNA SHETKARI SAHAKARI SAKHAR KARKHANA LTD.**

6) As far as the Factory is concerned, as stated above. Dr. Patil was its Chairman from 12.10.1995 to 11.7.2002. In his deposition, he has admitted that although he became the Minister, he continued to be the Chairman of the Factory till 11.7.2002 with a view to have an overall control over the Factory (page 69). It has also to be remembered that although he resigned as its Chairman on 11.7.2002, no Chairman of the



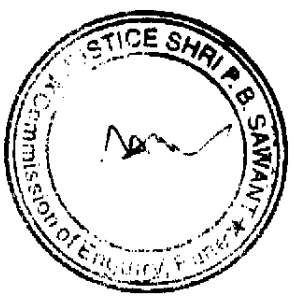
Factory has been elected since then till date, nor was any election held for the purpose. In fact, it has been admitted by the Vice Chairperson, Smt. Mangalatai Patil (Witness No.2, Page 3) that although Dr. Patil resigned as the Chairman, the chair of the Chairman is being kept unoccupied since then, and the Vice Chairperson does not occupy the seat and conducts the meetings by occupying the adjacent seat. She has also stated that often, she consults Dr. Patil on certain issues. Dr. Patil has admitted in his deposition (page 5) that since he became the Chairman of the Factory in 1995 till he resigned, there were in all 146 or 147 meetings of the Board of Directors. He attended only 16 or 18 out of them, implying thereby that he was keeping effective control over the affairs of the Factory as a Minister either from the Mantralaya or elsewhere, although he did not attend the other meetings. He has also admitted that although he did not attend all the meetings of the Board of Directors, he used to be consulted by the Board on important issues before taking decisions on the same. He has not denied that he was always in overall charge of the affairs of the Factory. In fact, he has stated, in so many words, as pointed out above that he continued to be the Chairman, although he became the Minister in order to have overall charge of the Factory. The Board of

Directors of the Factory consisted of 23 directors, out of whom 15 were elected members. In the two elections to the Board of Directors with which we are mainly concerned, namely, those held in 1995 and 2001, Dr.Patil fought the election on the platform of his panel. The majority of the directors elected in both the elections belonged to Dr.Patil's panel. Thus, the majority of the elected directors as well as the majority of the entire Board of Directors belonged to Dr. Patil's panel. The affairs of the Factory were, therefore, being conducted, according to the will of Dr. Patil and the directors elected on his panel.

7) The aforesaid facts will show that Dr. Patil was in effective control of all the affairs of the Factory during the relevant period.

a) **Sugar Export Scam**

8) Pursuant to the Central Government policy of encouraging the export of sugar for liquidating the surplus stock, the Factory had invited tenders in January, 2001 for the export of sugar. According to Shri. Karwa, the then Managing Director of the Factory, pursuant to the advertisement inviting tenders, about 4 to 5 tenders were received in July/August, 2001. However, in the meeting of the Board of Directors held

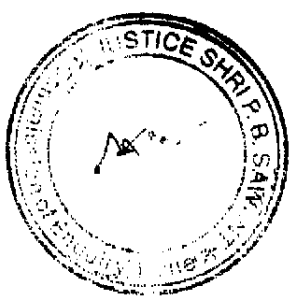


on 9.9.2001, only one tender was placed before the Board, namely, the tender received from M/s. Regal Impex, for export of 5000 metric tonnes, and the Board approved of the said tender for the selling price of Rs.11,000/- per ton. According to Shri. Karwa, the Board knew that there were other 3 to 4 tenders, but the Board told him to place only one tender of M/s Regal Impex before the meeting, and accordingly only M/s. Regal Impex's tender was placed before it, which the Board approved. According to Shri. Karwa, the tender received from M/s. Regal Impex was approved by the Board on the usual terms, namely, ex-factory price and the entire price of the sugar to be paid to the Factory at the time of or before the delivery. When this was communicated to M/s. Regal Impex, M/s. Regal Impex sent a reply raising fresh demands, which were as follows: -

That M/s. Regal Impex will pay the entire price, namely the price of bags plus transport, insurance and other charges within 7 days after the receipt of the delivery of the sugar at Kolkata, and for the delay in the payment, if any, they will pay interest at the rate of 18 per cent per annum.

9) Admittedly, even according to Shri. Karwa, there was no decision in the meeting of the Board of Directors to sell

the sugar according to the fresh terms imposed by M/s. Regal Impex. In fact, there was no meeting of the Board of Directors held after the receipt of the fresh terms. However, Shri. Karwa states that the decision was taken by informal consent of all the Directors. It is interesting to note that the fresh terms were received from M/s. Regal Impex on 3.10.2001 and, according to Shri. Karwa, he gave instructions to the godown keeper and the accountant to release the sugar, on the same day. Therefore, if he is to be believed, the informal consent of all the Directors was also taken on the same day and thereafter he had given the concerned instructions to release the sugar. It is further interesting to note in this connection, that according to Shri. Andurkar, the Investigating police officer, the letter dated 3.10.2001, allegedly received from M/s. Regal Impex, was, in fact, typed by one Shri. Vargese, the employee of the Factory and in the office of the Factory, on the typewriter of the Factory and on the basis of the draft given by Shri. Karwa to him. Thereafter, between October, 2001 and November, 2001, 2695 metric tonnes comprised in 26950 bags were removed from the godown and were handed over to the representative of M/s. Regal Impex. As transpires from the evidence, out of that delivery , 23316 bags were loaded on the train to Kolkata, and



1670 bags were sold to one M/s. Agarwal Sugar Agency of Latur, 1950 bags were sold to different traders in the vicinity of Pune and 14 bags were sold to M/s. R.R. Somani of Terna. As per the deposition of the Police Inspector, Shri. Andurkar (Witness No. 26, page 3), the bags sent to Kolkata, namely, 23316, bags were sold to Murarilal & others of Kolkata at the price of Rs.1,510/- per quintal. The Factory, however, received the payment of the said bags at the rate of Rs.1,504/- per quintal. Yet, according to Shri. Andurkar, the Factory in its books credited the amount received from Kolkata as the total price of all 26950 bags.

10) According to Shri. Andurkar, 1670 bags which were sold to the trader in Latur were sold at the rate of Rs.1,385/- per bag. However, there is no evidence with regard to the price at which 1950 bags were sold in the vicinity of Pune and 14 bags were sold to R.R. Somani of Terna. Shri. Andurkar has also deposed that the price for the bags sold to the trader at Latur, namely, 1670 bags at the rate of Rs.1,385/- per bag, was received by a demand draft payable to one M/s. P.D. Enterprises. This draft was received by the godown keeper of the Factory at Latur and the godown keeper, in turn, handed over the draft to Shri. Pawanraje. Subsequently, the said demand draft came to be deposited in the Lord Kirshna Bank of

Mumbai in the account of M/s. P.D. Enterprises, and the amount was withdrawn by a cheque drawn on self, by one Pawan Sinha, who was operating that account. The police investigation showed that the real name of Pawan Sinha was Pawankumar Chandrakant Jha. He was residing in a hut in a slum area in Kandivali, Mumbai, and he hailed from Laghor, District Muzzafarrpur, Bihar. This person had also operated the account in the name of M/s. Regal Impex opened in the same bank. However, the person is not yet traced. The investigation also shows that this Pawankumar Chandrakant Jha had two other concerns, namely, Sterling Exports and Gold & Mould, having export licence from the Central Government, and in the name of M/s. Sterling Exports he had taken delivery of 1600 bags from Sahyadri Sahakari Sakhar Karkhana of Satara, for export. Similarly, he had also entered into a transaction for exporting sugar belonging to one Natural Sugar Pvt. Ltd. of Pune and had paid Rs.1,00,000/- to them, which was, however, forfeited by that company because he could not complete the transaction.

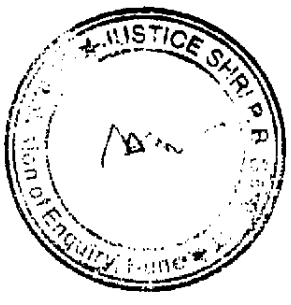
11) As regards 1950 bags sold in the vicinity of Pune, it has transpired that those bags were unloaded at Wadki Naka at Pune and were stored in the Kanifnath Warehouse and subsequently sold through two persons, namely, Mukesh and

Lalit Oswal. The bills were given in the name of M/s. P.D. Enterprises by these two persons, for the sale of the sugar, having their head office at Osmanabad and branch office at Pune. It appears that the price of 1950 bags collected by Mukesh and Lalit Oswal was paid by them in cash to three individuals, Vivek Kulkarni, Rajeev Pathak and Prashant Diwekar.

12) The other aspect of the matter is that the Board of Directors of the Factory passed a resolution authorising Shri. Karwa, the then Managing Director, to lodge a criminal complaint against M/s.Regal Impex, which he did on 12.7.2002. Subsequently, the Board passed another resolution authorising its Vice Chairperson Smt. Mangala Patil to lodge a criminal complaint against Shri. Karwa and others in the very same offence. She lodged the complaint on 3.10.2002 and Shri. Karwa was arrested on 11.3.2003 (page 46 of Shri. Karwa's deposition). In the course of the investigation of the said offence, Shri. Pawanraje, the director of the Factory, also came to be added as an accused, and was arrested on 7.11.2003. Shri. Pawanraje made an application to the Court of the Judicial Magistrate, First Class, Osmanabad, on 10.11.2003 (exhibit 323) under section 319 of the Criminal Procedure Code, for addition of Dr. Patil and the Vice Chairperson Smt. Mangalatai Patil as

accused, contending therein that the entire sugar export scam was at their instance and engineered by them.

13) While in the witness box, Shri. Pawanraje was questioned about this application (exhibit 323). He first stated that he did not remember any such application made by him. However, when confronted with the application, he admitted that he had made the application, but contended that the contents of the application were as per "his understanding at that time" when the application was made. It has to be remembered, that the application was accompanied by his affidavit in terms of the application. The main allegation in the application as well as the affidavit were that the transactions of sugar export were made as per the directions of the Chairman. There was also a specific allegation made in the application that the transaction for exporting the sugar was made at the instance of the said two persons. The application, admittedly, further states that the transaction was concluded as per the orders of Dr. Patil, issued on phone, and with a view to avoid possible responsibility for the transaction, he had caused a complaint to be filed against Shri. Karwa and made him an accused, and caused his arrest. It is not disputed further that at Kolkata, the sugar dispatched by the Factory was received by



the Factory's employee since the railway receipts were drawn in the name of self i.e. the consignor Factory. The railway receipts are on record. As has come on record from the deposition of the Sugar Commissioner, Shri. Vijaykumar and as per the chart of the prevailing prices in the Kolkata market at the relevant time, the domestic price at the relevant time was around Rs.1,500/- per bag. Allowing for the cost of transport, insurance and excise, a net profit of approximately Rs.200/- per bag, was made by whosoever sold the same in the domestic market at Kolkata. According to the Special Auditor in the Office of the Joint Director (Sugar), Nanded, the total loss incurred by the Factory in this transaction was Rs.53,75,009/- (exhibit 173). This estimate of loss made by the auditor appears to be reasonable because the domestic prices prevailing in Kolkata, Latur and Pune markets at the relevant time as per the chart (exhibit 244) were within the range of Rs.1299/- to Rs.1312/- per bag, in the last quarter of 2001. What is interesting to note is that the quantities of sugar sold at Kolkata and the quantities sold at Latur and Pune were meticulously planned to manipulate the accounts. For the price of 23316 bags sent to Kolkata, namely, about Rs.3.50 crores, which is the amount of price of

26950 bags at the rate of Rs.1,100/- per bag plus expenses, namely, transport, insurance and miscellaneous charges.

14) The contention that the Factory has not sustained any loss because it has received the price of 26950 bags meant for export at the rate of Rs.1,100/- per bag is, in the circumstances, incorrect. If all the 26950 bags (2695 metric tonnes) had been sold in the domestic market at the then prevailing market rate as has been pointed out by the auditor, the Factory would have earned Rs.53,75,009/- more. Further, as has been deposed to by the Sugar Commissioner, Shri. Vijaykumar, the Factory's free sale sugar quota was reduced by 26950 bags (2695 metric tonnes) on account of the alleged export. Secondly, the Factory had to pay Rs.22,90,750/- as central excise duty to the Central Government, and thirdly, apart from the burden of the central excise duty the Factory had to bear, the non-payment/evasion of the central excise duty amounted to a fraud on the Central Government and the Factory on that account earned a bad name. This is apart from the fact that the Chief Director (Sugar) of the Government of India has directed the Collector, Osmanabad to launch a criminal prosecution under the Essential Commodities Act against the Factory and the connected persons, for the false

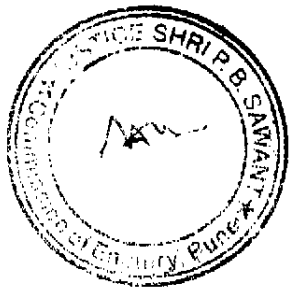
representation made that the sugar was exported, although it was diverted to the domestic markets.

15) The defence taken by Dr. Patil both in his affidavit and in his written submissions is that once the Central Government issues the release order for sugar, what the Factory has to do is to deliver the quantum of sugar to the exporter directly. His second defence is that in any case, he was not aware of this transaction and the Managing Director had not brought it to his notice. His third defence is that the Managing Director had brought about the novations in the contract, without bringing them to the notice of the Board of Directors.

16) In the first instance, admittedly, although the contract was for the export of 5000 metric tonnes (50,000 bags), only 2695 metric tonnes (26,950 bags) were taken out of the godown. Out of 26950 bags, only 23316 bags were consigned to Kolkata. Even this consignment was not in the name of the exporter M/s. Regal Impex. It was in the name of the Factory (self) as the railway receipts show. Further, if the consignment was to be delivered to M/s. Regal Impex, there was no need for the factory-representative to accompany the consignment. But this was done, because the consignment was in the name of the Factory and had to be collected by the representative of the

Factory at Kolkata, and then handed over to M/s. Regal Impex. Admittedly, there is no evidence that the Factory's representative handed over this consignment to M/s. Regal Impex. The Factory never bothered to know whether, in fact, the consignment was handed over to M/s. Regal Impex or not. On the other hand, the moneys i.e. the amount of about Rs.3.50 crores were received from M/s. Murarilal & others, who were admittedly not exporters and had no licence to do so. That amount was the price of 23316 bags. Further, even after the receipt of this amount, the Board did not bother to know as to who the said M/s. Muralilal & others were, and how they came to receive that amount from M/s. Muralilal & others, when the amount was to be received from M/s. Regal Impex. Secondly, the innovation in the contract was made on 3.10.2001, and by this innovation, the sugar bags were to be received at Kolkata. Admittedly, further Rs.20 lacs each, were received from Manalal Rajendraprasad and Bansi Hari Agricultural Co-operativie Society on one day, namely, 22.8.2001. These amounts were received before even the tenders were opened, which was done on 9.9.2001. M/s. Regal Impex's tender was opened and the acceptance letter was written to them on 11.9.2001. To that M/s. Regal Impex is alleged to have replied. According to Mr.

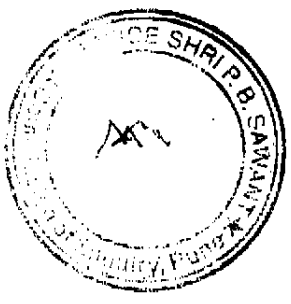
Karwa, the reply from M/s. Regal Impex was dated 26.9.2001 and was received on 3.10.2001. In this acceptance letter, M/s. Regal Impex had suggested new terms. One was that the delivery of sugar should be given at Kolkata and the Factory should incur all the costs i.e. transport, insurance etc. and the entire moneys would be paid to the Factory within 7 days of the receipt of the sugar at Kolkata. Shri. Karwa has written on this letter on 3.10.2001, that the sugar should be released as per the terms in the letter. Although, Shri. Karwa states that he had taken consent of the directors for this innovation before accepting the innovation, there is nothing in writing to suggest or indicate that he had done so. As stated earlier, this letter of 26.9.2001 allegedly received from M/s. Regal Impex was, in fact, typed in the Factory by the Factory's typist, one Shri. Vargese, on the typewriter belonging of the Factory. There is nothing on record to show that any tenders were received from these two traders or they had received any sugar from the Factory. The receipt of the amount of Rs.40 lacs is, therefore, throughout a mystery, although the Factory has shown this amount towards the sale of sugar, which is exported. In this connection, it is further interesting to note that the record does not show any amount received from M/s. Regal Impex, and the



amounts so credited to the alleged export account are all received from various other traders of Kolkata. The fact, that Rs.40 lacs were received from two traders of Kolkata even before the tenders were opened and the further fact that all the moneys towards the sale of sugar meant for export, were received from the domestic traders, gives rise to the legitimate inference that the sugar meant for export was preplanned to be sold domestically and was not to be exported at all.

17) It is admitted (pages 39 and 40) that the tenders for exporting sugar were invited by an advertisement in a local newspaper, namely, Sakal, dated 15.1.2001, which was not a State level newspaper. However, no tenders were received till 9.7.2001 when the first tender was received, and the other tenders were received between 20.7.2001 and 23.8.2001. The tender from M/s. Regal Impex was received on 20.7.2001. Although no tenders were received for about 7 months from the issue of the tender notice, no steps were taken to issue another advertisement. Thereafter the meeting for opening the tenders was held on 9.9.2001, and in that meeting only one tender of M/s. Regal Impex was placed. The directors claim that they did not know of the other tenders. According to Dr. Patil, he was not present in the meeting held for opening the tenders. He also

claims that he did not know anything about the innovations allegedly made by M/s. Regal Impex in their original tender. According to him, he does not know anything with regard to the export of sugar. Although by making these statements from the witness box, he tried to absolve himself completely of the obvious responsibility for the export-sugar scam, he has failed to convince the Commission in that behalf. He has admitted that this was the first time that the Factory was exporting the sugar. He has also admitted that this was a major transaction involving about Rs.5.50 crores (pages 41 and 42). Against the background of his claim that he was kept informed of the major issues and decisions, and that he was receiving the agenda of every single meeting of the Board of Directors, it is not possible to accept his contention that he was not in the know of the developments with regard to the export of sugar from the inception till the end. He claims that he came to know for the first time about the export of sugar only when the Factory received notice from the Central Excise authorities in February, 2002 (pages 10 and 41). If he is to be believed, it means that his claim that he was managing the affairs of the Factory efficiently even while sitting in Mantralaya, stands repudiated. This is against the background of his another claim that he visited Osmanabad on an average



fifty times a year, which comes to about one visit per week. Hence, less said about his so-called ignorance about the sugar export scam, the better.

(b) **Lifting of pledged sugar without the consent of the Bank.**

18) In all 23166 bags of sugar out of those pledged with the Bank, were lifted by the Factory without the consent of the Bank between 5.5.2002 and 17.5.2002. These bags were sold by the Factory at Kolkata. The part of the money received towards the sale price was credited by the Factory to the separate bank account opened by the Factory in HDFC Bank. It has to be remembered that the total price of the pledged sugar so sold without the consent of the Bank was Rs.3,41,11,880/-. It appears from the notings of the Sugar Commissioner's Office (exhibit 232) that out of the said amount, Rs.2,81,49,484/- were received by the Factory by the end of May, 2002, another Rs.18 Lacs were received upto 4.6.2002 and the balance amount was not received upto the date of the said office notings. According the Factory's letter to the Sugar Commission (exhibit 230), the amount due to the bank for the said sugar bags was paid to it by 23.5.2002. The defence of the Factory is that in this transaction, if at all, there was a breach of contract with the

bank. However, as deposed to by Shri. Karwa, the Bank had given "oral permission" for lifting the bags without payment in advance or simultaneously. Further, neither the Bank nor the Factory was put to loss on account of lifting of the sugar pledged with the Bank without advance or simultaneous payment. It was the Bank which ran the risk of not receiving the amount. But the Factory cannot be said to have incurred any loss on that count. On the other hand, by liquidating its stock as well as the amount of loan taken from the Bank, the Factory was commercially benefited. It cannot, therefore, be said to be an instance of maladministration as far as the Factory is concerned. That blame will have to be led at the door of the Bank. It appears that the oral consent which Shri. Karwa has pleaded in this connection was given by somebody on behalf of the Bank prior to the appointment of the Administrator. The Administrator gave a notice to the Factory on 16.5.2002 for having removed the sugar, which was pledged with the Bank. It may be noted in this connection that one key of the godown was with the Bank and no sugar could have been removed without the active consent of the Bank's officials, including the Bank's godown-keeper. There appears, therefore, much truth in Shri. Karwa's statement that oral consent was given by the

Bank/Bank's officials for removing the sugar. What is interesting to note is that Shri. Vijaykumar, the Sugar Commissioner, in his deposition (page 152) has in terms admitted that at the relevant time the Mumbai market price of sugar was Rs.1,265/- per quintal, ex-factory, which was a good price. In this connection, it has been placed on record on behalf of Dr. Patil the instances of sale by two factories in the vicinity of the Factory, namely, Bhogawati Sahakari Sakhar Karkhana Ltd. and Tuljabhavani Sahakari Sakhar Karkhana Ltd., which had sold their sugar in the same period, namely, in 2002 at Rs.1246.99 per quintal and Rs.1236.29 per quintal ex-factory, respectively (exhibit 234). However, the fact remains that the Factory had removed the sugar in breach of the contract with the Bank, illegally in connivance with somebody from the Bank, which was another public institution and which was also supposed to carry on its operations according to law. In this connection, the fact that Dr. Patil's brother Shri. Pawanraje was the Chairman of the Bank assumes importance. In the first instance, except for the word of Shri. Karwa, there is nothing on record to show that an oral permission was given by the Bank. Shri. Karwa has not named the person who gave the oral permission. There is no reason given as to why a written permission, if at all it could be

given, was not taken. The contract could be relaxed, if at all, only by the Board of Directors and no individual as such, had such authority. The Administrator has given a notice in that behalf. This shows that the sugar was removed surreptitiously in collusion with the Bank's man. This all amounted to a fraud played on the Bank and its shareholders and was, therefore, a criminal offence. The responsibility for the same has to be shared by Dr. Patil.

(c) **Sale of sugar on credit**

19) Although, the removal of the pledged sugar as stated above is not shown to have caused any loss to the Factory, the said sale of 23166 quintals was admittedly on credit. The bye-laws of the Factory do not provide for the sale of sugar on credit. Rule 46B of the Rules made under the Maharashtra State Co-operative Societies Act states as follows:-

46B. Restrictions on credit sales to non-members-

Where the bye-laws of a society permit credit sales, such sales may be made to traders and other non-members provided that the person to whom such sales are made gives an undertaking to the society that any dispute arising out of the transactions shall be referred to the Registrar for decision under Section 91.

20) It is evident from this rule that even where the bye-laws of the society permit credit sales, the person to whom such sales are made, has to give an undertaking to the society (Factory) that any dispute arising out of the transaction shall be referred to the Registrar for decision under section 91 of the Act. Not only the bye-laws of the Factory do not permit credit sales but by a specific resolution passed by the Board of Directors on 10.3.2002 (exhibit 230) i.e. just about 2 months before the aforesaid sale on credit, the sale of sugar on credit was banned, in terms.

21) Despite of this, as is discussed earlier, the sugar worth Rs.3,41,11,880/- was sold by the Factory on credit. It was obviously an illegal act on the part of the Factory. Neither the Board of Directors nor the Chairman can escape their involvement in the said illegality by passing on the blame to the Managing Director. It is not possible to believe that the

transaction on such a large scale was done by the Managing Director without the consent or the approval of the Board of Directors, including the Chairman. However, it appears that this is one of the charges levelled against the Managing Director, Shri. Karwa, in the disciplinary action taken against him. This will only show, and on Dr. Patil's own admission, that neither the Chairman nor the rest of the directors of the Board were managing the affairs of the Factory as per the duty cast on them under the bye-laws. This is admittedly an act of the maladministration of the Factory.

(d) <u>Misappropriation of the sugar and of the sale proceeds of the sugar at the shop run by the Factory in its main premises.</u>

22) The Factory was running a regular shop in its main premises for sale of sugar at concessional price to its members and employees within the quota fixed for them. In addition, the Factory also sold bonus quota of sugar at concessional price to the extent of 25 kilograms per member and per employee for Diwali and Gudhi Padwa. Both the members as well as the employees were given cards for the purpose. The members had to first deposit the amount in the accounts-section of the Factory before purchasing the sugar from the shop. The accounts-section would endorse the receipt of payment and the

members would then get the sugar from the shop. As regards the employees, they had to pay the price across the counter. The shop also sold empty gunny bags of sugar.

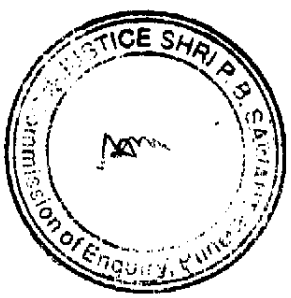
23) Shri. Vilas Pawar was in-charge of the sale of sugar in the shop since 1983. Shri. Marwadkar joined the shop as an Assistant to Shri. Pawar in 1993. Shri. Pawar received a show cause notice from the Head of the Accounts Section of the Factory on 22.11.1999 (exhibit 300), informing him that there was a short-fall of Rs.10,51,605/- in the shop's accounts upto 31.3.1999 as follows:-

(i) Rs.7,23,815/- on account of the sale of sugar to the members and the employees.

(ii) Rs.3,24,177/- on account of the sale of bonus sugar to the members and

(iii) Rs. 3,611/- on account of the sale of sugar across the counter.

24) By the said notice, he was asked to reconcile the difference. On 29.1.2000, he was served with another notice reminding him of the earlier notice and was asked to comply with the earlier notice of 22.11.1999. Thereafter, he received notices dated 1.4.2000, 26.4.2000, 31.8.2000 and 10.10.2000 all reminding him of the earlier notice. On 22.10.2000 he was asked



to reconcile the short fall of Rs.15,13,934/- being the difference upto 31.3.2000. On 17.11.2000 he received yet another notice by which he was asked to reconcile the difference of Rs.14,72,614/- upto 31.3.2000 (all notices exhibit 300 colly.).

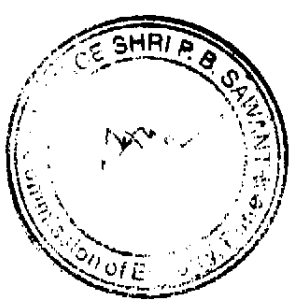
25) In the notice dated 22.10.2000, he was threatened with disciplinary proceedings, while in the last letter of 17.11.2000 he was warned that if he did not comply with the earlier notice, it will be presumed that he had misappropriated the amount.

26) It appears that since Shri. Pawar did dot comply with the requisitions of all these notices, the Factory started deducting 75 per cent of his salary from December, 1999. Shri. Pawar was on leave on medical grounds from December, 2002 to August, 2003, and was suspended from service w.e.f. 1.8.2003 (page 5 of Pawar's deposition). It appears that the Factory wanted to lodge a criminal complaint against Shri. Pawar and Shri. Marwadkar, and had, therefore, approached the police in July, 2003. However, the police refused to register the offence against them unless there was an auditor's report pointing out the liability. The Factory, therefore, requisitioned a special audit from the Factory's long standing internal auditors M/s. A.D. Shinde & Co. The auditors accordingly carried out the audit

of the sale of sugar from the shop for the period 1996-2003 and submitted their report on 18.8.2003 (exhibit 280). According to this report, the price of the sugar misappropriated and of the unaccounted empty gunny bags of sugar was together Rs.27,87,134.38. The Factory, therefore, filed a complaint against both Shri. Pawar and Shri. Marwadkar on the basis of the auditor's report, on 1.9.2003 (exhibit 223).

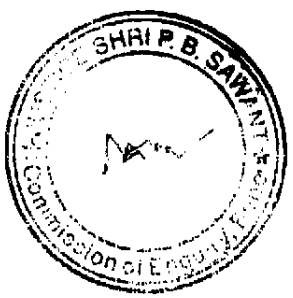
27) According to Shri. Pawar (pages 5 and 6 of his deposition), the sugar shop was a part of the Planning and Development Office (PDO), which office was headed by the Head of the Legal Department. The procedure for requisitioning the sugar and giving accounts of the sugar sale in the shop was as follows:-

28) Whenever the sugar was needed by the shop, as an in-charge of the shop, he would send the requisition to the Head of the PDO i.e. Head of the Legal Department and then would send it to the Accounts Section, and the Chief of the Accounts Section i.e. the Chief Accountant, would send it to the Managing Director, and on the recommendation of the Managing Director, the Godown-Keeper would release the sugar for the shop. He used to send the daily accounts of the sugar-shop to the Chief Accountant with the cash collected on that day. Shri. Pawar has



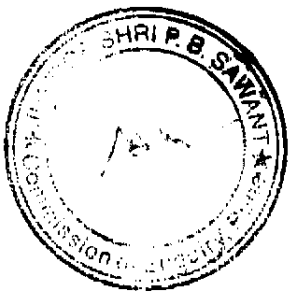
further deposed that there was a monthly inspection of the shop with physical verification of the sugar-stock by the Accounts Department. In addition, there used to be surprise inspection of the shop as well. It is also not disputed that at the year-end, the sugar stock was inspected physically by the Chief of the Legal Department, the Chief Accountant, the Managing Director and the statutory Auditor (exhibit 293). If this is so, the short fall/difference ought to have been noticed right from 1996. It is also important to note in this connection that the first notice as pointed out earlier served on Shri. Pawar with regard to the short fall of Rs.10,51,605/- was on 22.11.1999. This means that the Factory management had become aware of the short fall for the first time atleast on 22.11.1999. Instead of taking prompt action to check the irregularities, not only the Factory did not take any steps in that direction, but it appears from the table attached to Shri. Shinde's report (exhibit 280), that the short fall went on increasing from 1999 to 2003 from Rs.10,51,605/- to Rs.27,87,134.38.

29) In fact, the Factory management ought to have noticed it every day since 1996. The practice in the shop admittedly was to sell the sugar to the employees across the counter on payment of the full price. As regards the members,



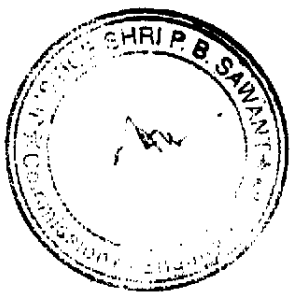
it is not disputed that before purchase of sugar, they were to secure a slip from the Accounts Office showing that they had paid the price in advance in the Accounts Department. The short fall due from the sugar shop was every day shown to the Head Office, and the short fall was progressively increasing and ultimately reached Rs.27,87,134.38 as on 15.4.2003. Shri. Shinde, the internal auditor, (Witness No.20) on page 3 of his deposition has stated that every year since 1996 he was pointing out to the management that he was not being given the details of the sugar which was being sold at the concessional price to the employees and the members of the Factory. He did not complete the internal audit of the year 2002 for want of the said particulars. This is yet another telling circumstance of the gross irresponsibility shown by the management towards the accounts and affairs of the Factory.

30) A question that arises is whether this irresponsibility was on account of a mere negligence on the part of the management or was a part of a larger conspiracy to defraud the Factory of the amount recoverable for the sugar misappropriated from the shop. This was a serious matter, since as pointed out earlier, the account of the sugar sold at the shop had to be taken at the end of every day. There is,



therefore, a strong presumption that the sugar was being misappropriated to the knowledge of the Factory management, and this misappropriation was going on every day. It could not be the handy work of Shri. Pawar and Shri. Marwadkar alone. There were obviously others with them, particularly those who were supposed to supervise and take account of the sugar sold at the shop every day. In fact, there is reason to believe that this was either done in collusion by the persons concerned or as deposed to by Shri. Pawar, who was a mere Clerk in the shop, the sugar and its price was being misappropriated by those above him. Shri. Pawar has named Shri. Pawanraje as the principal higher authority at whose instance the sugar was being misappropriated.

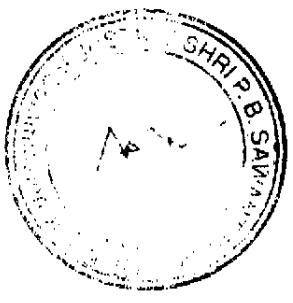
31) Shri. Suresh Deshmukh, one of the directors of the Factory and the Chairman of the Legal and Recovery Committee, in his deposition (pages 21 to 23) has stated that the internal audit reports since 1996 to 2003 were never discussed in the meetings of the Board of Directors. He has admitted that it is the responsibility of the Board of Directors to rectify the defects pointed out in the auditor's report. He has further admitted that the Chief Accountant, Head of the Legal Department (under whom the sugar shop was operating) or the



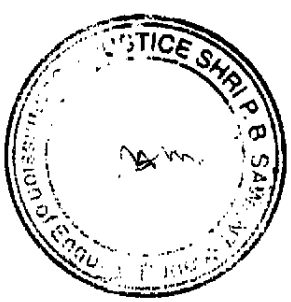
Managing Director were not proceeded against for the said defalcations. He has also pleaded ignorance about why no action was taken against the said officers. He has stated that even after the discovery of the said defalcations, no steps were taken to prevent the recurrence of such fraud, that the management was content with filing the prosecution against the two minor functionaries, namely, the clerks Shri. Pawar and Shri. Marwadkar, working in the shop, giving only oral directions to the rest.

32) It will be convenient at this stage to discuss Shri. Pawar's deposition in this behalf. Shri. Pawar has stated that he was working as a Clerk in the Factory since 1980 and in the shop since 1983. Shri. Marwadkar joined him in the shop in 1993 to assist him. He has admitted in his cross-examination (page 22) that he was not giving daily accounts of the shop to the Accounts Department, which he was supposed to do. He has also stated (page 13) that the three directors, Shri. Pawanraje, Shri. Haribhau Dethe and Shri. Ashokrao Shinde were taking away bags of sugar without making any payment. Shri. Pawanraje used to take every time about 10 to 15 bags of sugar, sometimes even a larger quantity, and the other two directors used to take away 2 to 4 bags of sugar every time. The Vice Chairperson Smt.

Mangalatai Patil used to take away empty gunny bags of sugar free of charge (page 15). This fact of the directors taking away the bags of sugar free of charge was known to Shri. Honmane, the Chief Accountant and the Head of the Legal Department (page 14). He has further admitted (page 18) that he did not write the day to day accounts of the shop because he could not do so as Shri. Pawanraje used to sell sugar directly in the name of the shop, and he was also compelling them i.e. Sarvashri. Pawar and Marwadkar to give sugar free of charge to various persons. He has further deposed (pages 20 and 21) that Shri. Pawanraje used to give him directions even in the Board meetings to give free sugar to specific persons. Some directors used to come to him in the shop and ask him to send sugar to particular persons. Shri. Pawanraje also used to give such directions outside the meetings of the Board. He has further admitted (page 26) that although the shop was not supposed to receive additional sugar till the earlier stock was accounted for, he did receive the additional sugar without giving accounts of the stock, because of the grace of the Board of Directors and the Accounts Department. It is an admitted fact that Shri. Pawar went on leave since December, 2002 and never resumed his job.



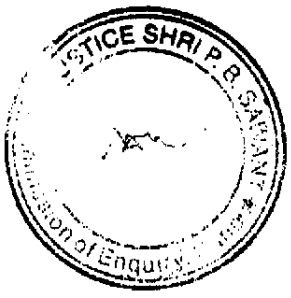
33) The aforesaid evidence clearly shows firstly, that the Board of Directors, the Managing Director, the Chief Accountant and also the Head of the Legal Department under whom the shop was operating, knew very well from the beginning that there was a large scale defalcation of sugar from the sugar shop. The accounts office which was supposed to take the accounts every day, did not care to take such accounts for years together. Some of the directors, as pointed out above, were themselves party to removing the sugar from the sugar shop without making any payment. It will be difficult to believe that Dr. Patil, the then Chairman of the Factory, did not know about this continuous defalcation in the sugar shop. His plea of ignorance in the matter will only mean that he had never read the internal auditor's report nor had he cared to keep control over the affairs of the shop and to acquaint himself of what the staff and some of the directors were doing with the property of the Factory. That is nothing short of a criminal negligence, when as a Chairman he was supposed to look after the day to day affairs of the Factory as per the bye-laws. The evidence, however, shows that he was all along aware of the defalcation in the sugar shop. He has admitted in his deposition as follows (page 31 onwards) viz. that he was aware of the



misappropriation of the sugar since 1995-96 as per the report of the internal auditor, who had pointed it out every year since that time. He has further admitted that although this was the case, the issue was never discussed in the meeting of the Board of Directors. His defence that he was satisfied with the explanation given by the Managing Director and the Chief Accountant that the part of the sugar for which amount was shown to be due was in fact in the stock of the sugar shop, and that the accounts were not finalised, is highly perfunctory and does not accord well with the sense of responsibility with which the duty of the Chairman is required to be carried out. The imperative inference that follows from the above evidence is that either Dr. Patil was also a party to the defalcation of the sugar from the shop or in any case had deliberately connived at it all along. In any case, he cannot escape his liability as the Chairman of the Factory for the said defalcation.

(e) <u>Drip Irrigation Scheme</u>

34) One of the allegations against Dr. Patil was that under his leadership the Factory embarked upon the scheme of installing Drip Irrigation System on the lands of the members of the Factory. It is not disputed that the drip irrigation system by itself is not only beneficial to the farmers but is also of immense



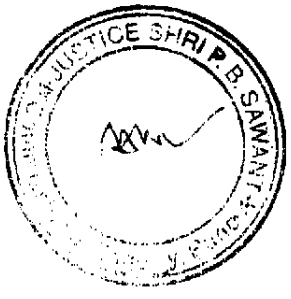
use in saving water used for raising the crop and particularly the sugar-crop. The water, which is a specious resource, is becoming every day more and more scarce almost all over the world. In a county like ours, and particularly in the States like Maharashtra where major part of the agricultural land has to depend upon rains for raising crop, the need for preserving and rationally using the available water resource, cannot be over-emphasised. It has also been proved and the evidence which has come on record in the present case also strengthens it, that the rational and efficient use of water, increases the yield of the crop. It is a known fact that of all the crops, the sugarcane consumes disproportionate water. There have also been a large number of complaints that many of the sugarcane farmers use water indiscriminately, which not only reduces the supply of water to others, but also results in less crop and less sugar content and also in excessive salination of the soil under the crop. The ignorance of the farmers and their unscientific methods of the use of water, have actually been responsible for both reduction in the sugarcane crop as well as in the content of the sugar in the sugarcane. The Central Government, therefore, has been encouraging rational and minimum use of water, and towards that end, has been recommending all over

the country, the use of the Drip Irrigation System for raising the crops. Hence, both the Central and the State Governments have evolved a system of subsidising the cost of the Drip Irrigation System deployed in the agricultural lands. As far as the State of Maharashtra is concerned, it is not disputed that according to the scheme of the subsidy, 50 per cent of the cost of the drip irrigation set was to be borne by the Central Government and 25 per cent by the State Government with a ceiling both on the amount of the subsidy as well as on the total acreage covered by the system. According to the resolution passed by the Board of Directors of the Factory (exhibit 163) on 26.11.2000, the Factory was also to subsidise further 15 per cent of the cost over and above the subsidy given by the Central and the State Government with a ceiling of Rs.7,500/- per hectare without ceiling on acreage. According to this resolution, the loan for the cost of the drip irrigation set was to be raised from the Osmanabad District Central Co-operative Bank and the amount of the government subsidies and the Factory subsidy was to be credited to the loan accounts of the respective farmers. This meant that the loan was to be taken from the Bank by each farmer for the entire cost of the drip irrigation set, and when the subsidies are received from the governments and the

Factory, they were to be credited to the account of the loanee farmer. The Bank issued cheques for the loan amount which were endorsed by the respective farmers in the name of the Factory, and the amount was collected by the Factory and credited to the account of the Factory. The Factory selected 7 manufacturers of the drip irrigation system, and gave option to the farmers to enter into agreement for supply of the sets, with any of them. The manufacturers so selected were M/s. Finolex Plastro, M/s. Netafim Irrigation, M/s. Nagarjuna Palma India Ltd., M/s. Jain Irrigation, M/s. EPC Industries Ltd., M/s. Premier Irrigation Equipment Ltd. and M/s. NTB Bowsmith Irrigation Ltd. The agreements with these manufacturers were entered into by the Factory for supply of the sets to the farmers at varying prices stipulated in the agreements (exhibit 328).

35) It appears from the evidence of Dr. Patil, that about 3715.65 hectares of land within the jurisdiction of the Factory were covered by the drip irrigation system, which is about 16 per cent of the total land within the jurisdiction of the Factory (page 28).

36) The farmers who availed of this system, however, felt cheated and also found themselves in ruinous debts on account of the following factors. The Factory never told the



farmers that the subsidy which was to be paid from the Central and the State Governments was 50 per cent and 25 per cent, respectively, of the cost of the system, excluding the costs of digging or boring well, of pump sets, of overhead tank, of the sand filter and of the ventury. The costs of these excluded items (exhibit 164) together was a major item of the expenditure involved in installing the system. This means that this major expense was to be borne by the farmers by raising their own funds. The farmers were, on the other hand, under the impression that the subsidy coming from the two governments and the factory to the extent of 90 per cent was on the total cost of the system, including the extra items and they had to bear only 10 per cent of the total cost. There is reason to believe that they might not have opted for the system if they had known that they had to take loan of the amounts also to cover the costs of the said accessories, at the rate of 16 per cent per annum. The farmers were, it appears, not apprised of the fact that the subsidy from the Central Government was not to be received by all the farmers at a time, but according to seniority every year depending upon the allocation of the funds to the districts concerned.

37) Thirdly, it appears that the Factory had secured the permission of the Commissioner for Sugar for payment of the Factory's subsidy to 895 farmers. The total amount involved was Rs.84,20,433/-. However, that subsidy was not paid to any of farmers and the entire amount was utilised for the day to day expenses of the Factory, although as stated earlier the Factory was to pay the amount to the farmers and to that extent lessen their burden of debt. Lastly, as far as the factory-subsidy is concerned, it may be noted that though it is not paid to the farmers who had applied as per the assurance given by the Factory, the said amount of the subsidy belonged to all the farmers, an overwhelming majority of whom had not applied for the drip irrigation system. Yet, the monies belonging to them was to be paid as subsidy to the farmers who had applied for the same, according to the plan of subsidy accounted by the Factory. This was definitely unjust to the non-applicant farmers and amounted to the misapplication of their funds for the benefit of the few farmers, who had applied for the system. It does not appear that the Factory had bestowed any thought on this aspect of the factory-subsidy when it promised it. Thus the amount of the factory-subsidy, namely, 15 per cent of the cost of the drip irrigation set could not have been legally paid to the

applicant-farmers. Secondly, since the farmers had applied for the sets on that representation, they stand burdened with the debt to that extent. There is reason to believe that had they not been promised the factory-subsidy they might not have applied for the system. In sum, the farmers stand overburdened with the debt to the bank and have to continue to pay the debt with the interest at the rate of 16 per cent per annum till it is wiped out. All this on account of the misrepresentation and non-disclosure of the true facts to the farmers. As it now transpires, their agony increased further on account of the unfortunate drought conditions successively for 2 to 3 years, thereafter.

(f) **Expansion**

38) On 11.3.1998, the Factory by its letter of the same day, (exhibit 186)brought to the notice of the Sugar Commissioner their earlier proposal for expansion of the Factory for increasing the crushing capacity from 3500 metric tonnes to 5000 metric tonnes per day which was approved by the Ministry of Industries, Central Government, on 27.9.1996. However, they could not proceed with the expansion on account of the then drought conditions. The condition of the supply of sugarcane had since improved, and they were in urgent need of expanding the capacity of the Factory as per the earlier proposal. The

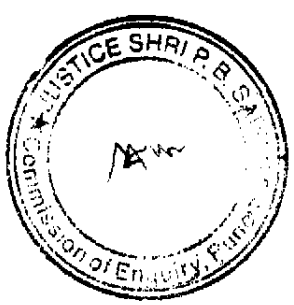
tentative estimate of the expenses for the expansion was Rs.12 crores, and the Sugar Commissioner was requested to accord administrative and financial sanction for the said expansion. The Sugar Commissioner by his letter dated 30.5.1998 (exhibit 185) rejected the Factory's proposal on two counts. The first ground was that the sugarcane available at that time was less than the installed crushing capacity of the Factory, and secondly, the expansion project was not approved and recommended by the Vasantdada Sugar Institute (VSI). By its letters of 29.5.1998 (exhibit 187), 3.6.1998 and 27.6.1998 (exhibit 188) the Factory pointed out to the Sugar Commissioner how more sugarcane was and could be available, and also explained the manner in which the Factory was in a position to raise the funds amounting to Rs.15 crores for expenses of the expansion. By his letter dated 2.7.1998 (exhibit 187), the Commissioner accorded both administrative and financial sanction to the expansion at the cost of Rs.14.60 crores.

39) It appears that on 14.6.1999, the Factory had applied to the Sugar Commissioner for addition of machinery. The Sugar Commissioner by his letter dated 25.10.1999 (exhibit 189) accorded sanction for the expenditure of Rs.71.50 Lacs for the addition of some machinery. On 5.11.1999, the Factory sent

yet another proposal to the Sugar Commissioner for more addition of machinery. The Sugar Commissioner by his letters dated 7.12.1999 (exhibits 190 and 150) accorded sanction for increasing the expenses of the expansion, to the tune of Rs.28,43,80,000/-.

40) The Sugar Commissioner, however, raised two objections to the procedure followed by the Factory while undertaking the expansion. One objection was that the tenders for the machinery were first opened at the Factory level, and only then were placed before the State Level Committee, which was in violation of the G.R. dated 22.5.2000 (exhibit 137). The Sugar Commissioner had written to the State Level Committee and suggested that fresh tenders for the machinery should be invited. However, it appears that the State Level Committee in its meeting held for the purpose went according to the prevailing procedure, which meant that the tenders could be opened at the Factory level. The Sugar Commissioner was present in the meeting of the State Level Committee, and it does not appear that he had pressed his objection in the meeting. A perusal of exhibit 137 concerned, also does not seem to corroborate the objection the Sugar Commissioner, had raised.

41) The second objection raised by the Sugar Commissioner was with regard to the splitting of the expenses to be incurred for the civil work, and inviting of the tenders separately for each of the split work. The Factory instead of inviting one tender for the entire work worth about Rs.2 crores, had invited tenders for 8 different works. This was done by the Factory to avoid taking sanction both of the Sugar Commissioner and of the State Level Committee. At the most, the civil work involved two major works, one for constructing a boiler house and another for constructing a mill-house, and hence no more than two different tenders could have been invited, first involving an amount of Rs.1,03,27,610/- and the second costing Rs.1,57,16,789/-, which amounts were above Rs.1 crore and, therefore, required approval of the State Level Committee. The eight tenders were so devised that the amount of cost estimated in each was below Rs.50 lacs, which dispensed with the sanction even of the Sugar Commissioner. Even amounts approved by the Factory for 4 items were above Rs.50 Lacs each. For item Nos. 4, 5 and 6 the amounts worked out to Rs.50,13,731/-, Rs.50,17,995/- and Rs.52,44,646/- respectively and for item No.8, the amount worked out to Rs.54,74,573/-. Hence, even after splitting the tenders, the expenses incurred on these four

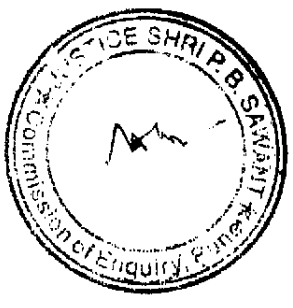


items did require the approval of the Sugar Commissioner, which, admittedly was not taken. This is apart from the fact that the splitting of the tenders into more than 2 items was on the face of it deliberately contrived. It is also interesting to note that all the tenders which were approved were of one tenderer viz. Shri. Pandhe (exhibit 200).

42) One more thing that requires notice in this connection is that according to the Sugar Commissioner, the circular dated 23.4.1998 (exhibit 210) required that for the installation of machinery or for mechanisation of the work, the Factory had to consult either the Vasantdada Sugar Institute or the National Federation of Co-operative Sugar Factories. The Factory had not consulted either of these two institutes for the expansion or for the co-generation plant. This has been stated by both the institutes as per their letters exhibits 211 and 212. The Factory had thus rendered itself liable for the defiance both of the government resolution as well as of the Sugar Commissioner's Circular referred to above.

(g) <u>Co-generation Plant</u>

43) The Factory by its communication dated 30.8.2001 (exhibit 204), sent a proposal to the Sugar Commissioner for co-generation power plant of 60 MWs. The amount involved was



Rs.164.85 crores. The then Sugar Commissioner, Shri. Kulkarni by his letter dated 31.10.2001 (exhibit 208) gave approval to the proposal. It appears that this proposal was not implemented. However, in the meanwhile, on 24.10.2001, the Factory applied to the Sugar Commissioner for according approval to the installation of a power project involving 6 and 8 MWs (exhibit 205) at the cost of Rs.25 crores. By his letter dated 7.11.2001 (exhibit 206), the Sugar Commissioner queried back to the Factory as to the need for the said project when by his letter dated 31.10.2001 (exhibit 208), he had already given approval for the project involving 60 MWs at the cost of Rs.164.85 crores. The Factory vide its reply dated 19.11.2001 (exhibit 207) explained to the Sugar Commissioner the need for 6 and 8 MWs power project by pointing out that the said project could be completed within a short span and by merely modifying the existing machinery at a comparatively lesser cost of Rs.25 crores, and thereafter on 28.1.2002 the Sugar Commissioner, Shri. Kularni, gave sanction to the said project of 6 and 8 MWs (exhibit 161).

44) The contention advanced by Shri. Gadhave on behalf of Shri. Hajare that neither the expansion nor the modernisation of the Factory was necessary nor the installation

of the additional power plants, does not merit serious consideration for the simple reason that admittedly the Factory had a crushing capacity of only 3500 metric tonnes per day. However, as pointed out earlier, about 3 years prior to undertaking the expansion and the project of the co-generation plant, the production of sugarcane within the jurisdiction of the Factory, was between 6 to 8 lacs metric tonnes, and the sugarcane of the member farmers had to be diverted to the other factories. If this is so, then the expansion, and the co-generation plant project undertaken by the Factory could not be said to be unwarranted. In fact, these figure shows that it was necessary and in the interests of the Factory. The other contention in this regard was that the Factory was saddled already with the burden of debts, and the further expansion, which involved additional loans to be taken from the bank, was not wise. While appreciating this contention, one has to remember that the Factory has been established for doing business in the interests of all the members of the Factory. Being a commercial venture, though on co-operative basis, it has to take reasonable risks if the risks are based on economic calculations, which take into account the profit and loss of the venture. And, if there is a legitimate expectation of the least

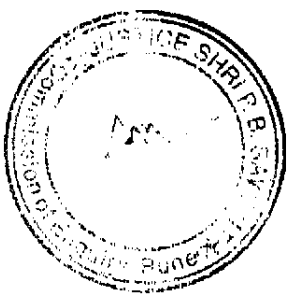
risk as against the expected gains, which will more than offset the risks if any, it cannot be said that it was imprudent on the part of the management to go in for the expansion and the accompanying power project. It is, therefore, difficult to uphold these contentions of the complainant. It has further to be remembered in this connection, that both the projects of the expansion/modernisation and of the co-generation of power were approved by the Vasantdada Sugar Institute and the Sugar Commissioner both financially and administratively. There is reason to believe that unless the proposals were sound, no such approval would have come forward from these two authorities. The fact that after the expansion of the Factory and the installation of the co-generation plant, the increased capacity of the Factory was never put to use cannot be held against the management because the failure of the rains in successive years thereafter, affected the production of the sugarcane. The reduced crop of the sugarcane could not be attributed to the management. There was no failure on the part of the management to utilise the enhanced capacity for any other reason.

45) The further contention advanced by Shri. Gadhave was that out of the term loan taken for the co-generation

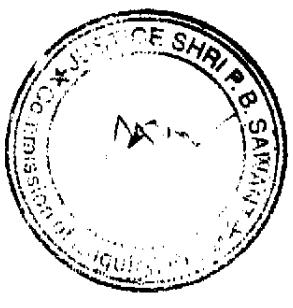
project, the amount of Rs.35.65 crores was used for payment of other loans and interest thereon. It has to be remembered that while considering whether that fact was to the disadvantage of the Factory and its economy as a whole, the loss to the Factory on account of the payment of interest on the short margins, has to be balanced against the utilisation of this amount for the purpose of meeting the needs of the short margins. There is nothing to show that the interest which had to be paid on that amount as a long term loan was more than the interest which had to be paid for using it as a short margin. On the whole, therefore, the Factory did not incur any loss on account of the utilisation of the loan for the said purpose. The short margin loans become necessary, from time to time, when the market price of the sugar goes below the price at which it is pledged with the bank. The management is not responsible for such fluctuations in the market prices.

(h) **Failure to perform the duties as a Chairman of the Factory**

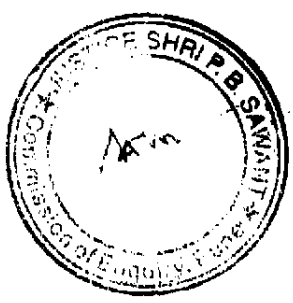
46) Bye-law No.44 of the Factory's bye-laws casts an obligation on the Chairman to supervise the day to day affairs of the Factory and to protect its interests. The bye-law even provides for monthly honorarium to be paid to the Chairman for



the purpose. However, in the present case admittedly, Dr. Patil became the Chairman of the Factory on 12.10.1995 and continued to be so till 11.7.2002, on which date as stated earlier he resigned from the post. Dr. Patil became the Minister of the State Government in October, 1999 and continued to be so till the new ministry was sworn-in in 2004. He was thus holding both the positions of the Chairman of the sugar Factory and of the Minister of the State Government from October, 1999 till 11.7.2002 on which day he vacated the office of the Chairman, since he could not hold the two offices simultaneously. The provisions of section 73A(1) read with Section 73A(6) of the Maharashtra Co-operative Societies Act (hereinafter referred to as the Act) prohibits a member of the Council of Ministers to be or continue to be the chairman of such co-operative society as the Terna Shetakari Sahakari Sakhar Karkhana Ltd. In spite of this legal position, Dr. Patil continued to be the Chairman of the Factory from October, 1999 till 11.7.2002. It has further to be remembered that he vacated the office only after a writ petition for the purpose was filed against him. It is ironic that a senior minister of the State Government like Dr. Patil had to be reminded of the provisions of the law by the Secretary of the Government (exhibit 146). It is necessary in



this connection to note the sequence of events. It was the Commissioner of Sugar who on 1.6.2002 wrote a letter on the subject to the Secretary of the Co-operation Department, and thereafter the Secretary wrote a letter dated 5.6.2002 to Dr. Patil in that behalf. However, Dr. Patil, inspite of that, did not think it necessary to vacate the office of the Chairman. It is then that a writ petition was filed as a Public Interest Litigation for the purpose, on 26.6.2002 (exhibit 101), and it was on 11.7.2002 that Dr. Patil resigned from the said post. It thus appears that Dr. Patil wanted to stick to the Chairman's office till the last, even after being acquainted with the position in law, assuming that he did not know it till that time. Even after resigning from the post of the Chairman of the Factory, the post was not filled by election, and no explanation has been given by him as to why this was not done. The evidence which has come on record even of the Vice Chairperson Smt. Mangalatai Patil shows that nobody occupies the seat of the chairman even in the board meetings. It is kept vacant, and the Vice Chairperson conducts the meeting by keeping the chair unoccupied. It has to be remembered that Dr. Patil has continued to be the director of the Board of Directors of the Factory, till date. This shows that though Dr.Patil resigned as the Chairman to satisfy the



requirements of law, he continued to function as Chairman for all practical purposes. It is for this reason again that the Factory did not elect another Chairman.

47) After he became the minister of the State Government, Dr. Patil continued to stay in Mumbai. He could keep the day to day contact with the Factory, through communication from Mumbai. He has deposed that he used to come to Osmanabad about 50 times a year. He has also admitted that out of 146 or 147 meetings of the Board of Directors, he had attended only 16 or 18 meetings. He has further stated that he did not know anything about the export sugar scam, the sugar shop scandal, and the sale of the pledged sugar on credit. He learnt of all these matters much later. According to him, there was no need for his daily presence in the Factory to keep control on its affairs. He has also admitted that on account of the pressure of work, he could not attend the meetings of the Factory. But according to him, on important matters, the Vice-Chairperson and the directors were consulting him before taking any decision on the same. He has also asserted that he remained the Chairman of the Factory to keep an overall control over its affairs.

48) This shows that he was most casual in his approach to the affairs of the Factory. On his own admission, he did not attend to the same as required. This can be held to be an extremely inexcusable conduct on his part with regard to the Factory, which was daily making transactions worth lacs of rupees. It was expected of him as a Minister of the State Government to show the required sense of responsibility and resign from the post on his own and get a new Chairman elected as soon as he found that he was unable to look after the day to day affairs of the Factory. This is apart from the law which required him to vacate the office on becoming the Minister.

(I) **Allegations of illegal and high handed conduct of Dr.Patil**

49) Shri. Vilas Pawar in his deposition has stated that in the 3rd week of the month of Shravan, which comes to August of the year 2003, he was called by Dr. Patil to the Solapur Guest House, where he was staying. Shri. Vilas Pawar has narrated the incident which had occurred at the Guest House at that time as follows, (Para 4 of his deposition).

"Political quarrel between Dr.Padmasinh Patil and Pawanraje Nimbalkar started since the end of the crushing season of the year 2000. Pawanraje Nimbalkar is a director of

the Factory. This quarrel was over the O.D.C.C. Bank. On a Monday in the 3rd week of the month of Shravan of the year 2003, Dr.Padmasinh Patil called me to the Dak Bangalow of Solapur and told me, you file a criminal complaint against Shri. Pawanraje Numbalkar. The complaint should be of the scams Shri. Pawanraje Nimbalkar had made in the Factory. There was a video camera, and he told me to give answers to the questions asked, before the said camera. He told me that I should give answers according to the questions and answers prepared by the Factory's man. There Shri. Suresh Deshmukh (a Director of the Factory) and Shri. Tikale Guruji (Taluka President of Nationalist Congress Party) were present and the paper containing the questions and answers was in the hands of Shri. Suresh Deshmukh. I told him not to drag me in such affairs. I was already receiving salary for 3 years with a cut in it. Thereafter, Shri. Tikale said to me that I should give interview to the journalists. I declined to do so. Then I came with Shri. Tikale down from the upper floor. Thereafter Dr.Patil again called me up. He said "Why are you afraid? I am behind you." I told him by touching his feet that I should not be dragged in it. At that, he said to me "I will see you. It is in my hand what is to be done with you." He said many other bad things but I cannot tell them

now. (At this time the witness broke down). I was brought to Solapur in the Factory's car and I was brought back to my house in the Factory's car. When I was brought back in the car, it was a Qualis car and the Managing Director, Shri. Mule, was with me. Thereafter within a month or so, a complaint was filed against me and Shri. Marwadkar."

50) However, in their deposition, Shri. Tikale Guruji and Shri. Suresh Deshmukh do not support Shri. Pawar's version of the incident. On the other hand, they state that it is Pawar who had asked for the meeting with Dr. Patil, and hence he was taken to the Solapur Guest House, where Shri. Pawar pleaded with Dr. Patil to spare him from the criminal prosecution, otherwise he would be ruined. In other words, according to them, not only Shri. Pawar sought an interview with Dr. Patil on his own, but had also sought Dr. Patil's mercy from the apprehended prosecution against him. In his deposition, Dr. Patil does not deny that Shri. Pawar had met him in the Solapur Guest House, but states that he had come to beg mercy from him and he (Dr. Patil) told him that the law will take its own course. It is true that Shri. Vilas Pawar has not examined any witness to corroborate his version and the witnesses examined by Dr. Patil do not corroborate his version. But the version given

by Shri. Pawar of the incident in question has to be examined against the background of the surrounding circumstances. In the first instance, it is Shri. Pawar who has brought that incident on record in his examination-in-chief. Secondly, the details of the incident to which he has deposed, would not ordinarily be concocted. Thirdly, the demeanour of Shri. Pawar and the feelings with which he narrated the entire incident inspire confidence in his version. Fourthly, Shri. Pawar a mere clerk in the Factory's shop would not dare to make such allegations against the Chairman of the Factory, the Minister of the State Government and a powerful politician of the region. Fifthly, it is not suggested that he was ever inimically disposed towards Dr. Patil. Lastly, the differences between Dr. Patil and his brother Shri. Pawanraje is a matter of record, and therefore that Dr. Patil may want to use Shri. Pawar against him is not unexpected. Much cannot be made of the fact that Shri. Pawar did not examine any witness in support of his version. Those who are aware of the ground realities will appreciate that witnesses can not easily come forward against powerful politicians like Dr. Patil. That Shri. Tikale Guruji and Shri. Suresh Deshmukh gave a contrary version is understandable in view of their political loyalties to Dr. Patil. Taking all

circumstances into consideration, Shri. Pawar's version of the incident has to be upheld.

51) Admittedly, at the instance of the Sugar Commissioner, Shri. B.L. Jadhav, the Director (Administration) in the Sugar Commissioner's office, accompanied by his assistants Shri. M.B. Joshi and others, had gone to the Factory for inquiry on 28.9.2002. This inquiry, it appears was necessitated by the fact that the government had received a complaint from Shri. Hajare with regard to the affairs of the Factory which was forwarded to the Sugar Commissioner by the government. Hence, the Sugar Commissioner directed Shri. Jadhav and Shri. Joshi to make inquiry by visiting the Factory. Shri. Jadhav has stated in his deposition (page 2) that while he was in the chamber of the Managing Director of the Factory for the purpose of the inspection of documents, he received a telephonic call from Dr. Patil, who asked him to stop the inquiry and go back.

52) The Sugar Commissioner, Shri. Vijaykumar, in his deposition (page 49) has stated that on 17.2.2003, he had gone to the Mantralaya to attend a meeting called by the Chief Minister in respect of a complaint received from Shri. Hajare. After the meeting, he was called by Shri. Kupekar, the then

Minister of State for Co-operation, in the ante-chamber of Shri. R.R.Patil, the then Minister for Rural Development. When he entered the chamber, Dr.Patil asked him in an aggressive manner as to how he had started the inquiry against him. He repeated this question twice or thrice in the same manner. He has also deposed to the further developments in the chamber, which are not relevant for our purpose.

53) These two instances, in which the subordinate officers have made complaint against Dr. Patil about his interference in their work and that too in a rude manner, reflect on the authoritarian, illegal and unbecoming mode of Dr. Patil's behaviour. They also show that Dr. Patil was inclined to prevent the government officials from performing their legal duties. These incidents had occurred when he had legally ceased to be the Chairman of the Factory. Although Dr. Patil in his evidence has denied these instances, there is no reason to discard the version of the two subordinate officers. These are the instances of the illegal exercise of his authority by Dr. Patil as the Minister of the State Government, for which he deserves to be censured.

(j) **Deductions from the sugarcane price payable to the farmers.**

54) Admittedly, various sums of money were deducted from the sugarcane price payable to the farmers from time to time as their contribution for different purposes. Dr.Patil in his deposition (pages 58, 62 and 63) has admitted that the funds collected for Kargil War to the extent of Rs.15,05,153/- in the year 1999 were paid to the government only on 5.6.2004 (page 70). The funds collected for Sakhar Sankul to the extent of Rs.16,01,742/- are still lying with the Factory. The amount of Rs.10,60,708/- collected for the Gujarat Flood Affected Persons was lying with the Factory till 7.6.2004. The amount of Rs.10,30,336/- collected towards the Gujarat Earthquake Relief Fund was also lying with the Factory till 7.6.2004 (page 7 onwards of Shri. Gadhave's submissions). The amount of Rs.3,70,927/- collected for the Chief Minister's Fund, the amount of Rs.8,53,928/- for Gharkul (Housing) Project and the amount of Rs.28,78,006/- collected towards Small Savings, are still lying with the Factory.

55) As pointed out earlier, in this connection we have also to take into consideration the amount of Rs.84,20,433/- for which the sanction of the Sugar Commissioner was taken for payment as subsidy to the farmers towards the Drip Irrigation

System. That amount was utilised by the Factory somewhere else, and was not paid to the farmers.

56) This shows the blatant misutilisation of the funds belonging to the members of the Factory. This misutilisation of the funds was to the knowledge of the Board of Directors, including Dr. Patil. There is no explanation given by Dr. Patil as to why the funds were so misused, except that they were utilised for the day to day expenses of the Factory. This cannot be an excuse for the illegal/irregular use of the funds and is an instance of the patent maladministration of the Factory.

(k) Petrol Pump

57) The Factory runs a petrol pump, where petrol is sold to the members of the public. The Factory vehicles also take petrol from the same pump. There is no reason for the Factory to incur losses in the petrol pump business. However, as Dr. Patil has admitted (page 19) the petrol pump has been incurring losses. He does not know either the amount of the losses or the reasons for the same. He was supposed to furnish the reasons of the losses to the Commission, but failed to do so. The loss in the petrol pump business is yet another instance of the maladministration of the affairs of the Factory.

(l) Distillery

58) The Factory owns a Distillery where alcohol and ancillary products are produced. The Distillery is auctioned for running, right from the year 1978 when it was started. Except for the period 1987 to 1994, when the Factory itself was running the Distillery, for the rest of the period, the contract for running the Distillery was given by auction. For the period for which we are concerned, namely, 1998 onwards, it appears that the contract was given to one Nanasaheb Patil, the brother-in-law of Shri. Pawanraje Nimbalkar, one of the directors, on the terms that he would deposit Rs.30 lacs as security, and pay Rs.6,50,000/- per month as a royalty, for a period of 5 years. The contract was to expire in 2003. The contractor made defaults in payment of the monthly royalty, and abandoned the contract w.e.f. 15.6.2003. The defaults in the monthly payments had started soon after the signing of the contract, with the result that the accumulated arrears of the payments over-ran the security deposit of Rs.30 lacs. Dr. Patil has admitted that no sooner the contractor had started defaulting, the contract ought to have been terminated by the Factory. However, it was not done. On the other hand, the Factory issued a show cause notice to the Managing Director, Shri. Karwa, without terminating the contract of or even issuing a

show-cause notice to, the contractor. It appears from Dr. Patil's evidence that on the date of his deposition, the amount of Rs.3,70,000/- had remained to be recovered from the contractor. This is yet another instance of the maladministration of the Factory (pages 19 to 23 of Dr.Patil's deposition).

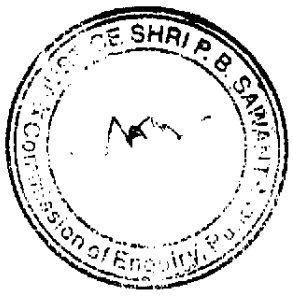
B) **OSMANABAD DISTRICT CENTRAL CO-OPERATIVE BANK LTD.**

59) The Osmanabad District Central Co-operative Bank Ltd. (the Bank) was at the relevant time dominated by Dr. Patil's party, namely, Nationalist Congress Party (NCP), since out of 13 directors of the Board of Directors, 10 belonged to that party. Shri. Pawanraje Nimbalkar i.e. Dr. Patil's cousin brother was the Chairman of the Bank at the relevant time i.e. since 27.11.1996 to 7.5.2002, when the Administrator was appointed. He was also a director of the Factory having been elected on the panel of Dr.Patil. The allegation is that Dr.Patil was controlling the Bank through his cousin Shri. Pawanraje.

60) Three instances are highlighted to prove this contention. Before we discuss these instances, it is necessary to state that beyond alleging that the Chairman of the Bank, Shri. Pawanraje Nimbalkar, was the cousin brother of Dr.Patil, no

connection is shown between Dr.Patil and the Bank. The first of the instances is that of the huge loans sanctioned by the Bank to the Factory, although the Factory was in losses at the relevant time. This would not have been done ordinarily for any other institution. It has to be remembered in this connection that as pointed out earlier, the chairman of the Bank Shri.Pawanraje was also a director of the Factory, and was playing an active role in the affairs of the Factory. Therefore, it cannot be ruled out that Shri.Pawanraje on his own and without the intervention of Dr.Patil had sanctioned these loans. Secondly, the projects for which the loans in question were sanctioned were according to the relevant reports viable enough to service the loans. These project-loans were also backed by adequate security. At the relevant time, even according to the VSI report, these loans were serviceable by the Factory. As regards the non-project loans, they were either secured by the government guarantees or by the Maharashtra State Central Co-operative Bank. It does not appear that the loans granted by the Bank to the Factory were irregular.

61) As regards the allegation that the loans taken for a particular purpose were not used for that purpose, this has certainly happened in one case, and this is the only case pointed

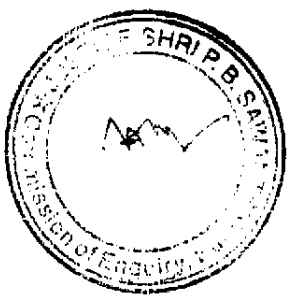


out where the loan was used for a different purpose. In the year 2001-02, an amount of Rs.14.85 crores was granted as a loan to the Factory for the co-generation plant. However, on the day the loan was so given to the Factory, the entire amount was appropriated to pay off various other loans, such as, short margin, outstanding interest on the various loans, gunny bags pledged account and distillery loan account. This was illegal, but the Bank had actively co-operated in this illegal action. Indeed without the co-operation of the Bank, this could not be possible.

62) This shows an obvious collusion between the Bank and the Factory with the former headed by Shri. Pawanraje Nimbalkar and the latter by Dr. Patil, who were connected with the Factory. Dr. Patil cannot deny his responsibility for this illegality.

a) **Pledged Sugar**

63) The Factory had pledged sugar produced by it to the Bank to secure credit facilities from the Bank. However, as has come on record, during May, 2002, the Factory, with the connivance of the Bank had sold 23166 bags of sugar without making payment of the sugar to the Bank. To the extent the Bank allowed the pledged sugar to be removed from the godown



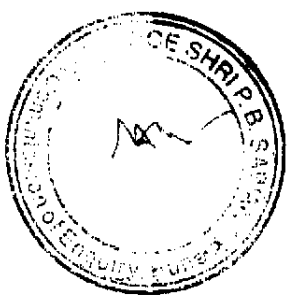
without first receiving the payment, it has obviously acted contrary to the banking practice and the law. This shows obvious collusion between the Factory and the Bank, and this collusion would not have been possible were it not for the fact that the Factory was headed by Dr. Patil and the Bank was headed by Shri. Pawanraje Nimbalkar, who was not only Dr. Patil's cousin but also a director of the Factory. This was indeed a fraud played by both of them on the share-holders of the Bank.

C) **TERNA PUBLIC TRUST**

64) The allegations in respect of the Trust are that Dr. Patil and his family use the trust money for themselves though the money comes from the members of the public, including the farmers within the jurisdiction of the Terna Factory.

65) The Trust was established in 1980, mainly for the purpose of spreading education and to provide educational facilities to the wards of the agriculturists. The Trust runs two engineering colleges, one medical college, one Dental College, one Arts, Science and Commerce College, one I.T.I., one Polytechnic, one English medium school and four Marathi medium schools variously at Osmanabad and New Mumbai. The trust-deed of the Trust has some interesting features. The

Chairman of the Trust has the power to nominate the trustees in place of the retired trustees and also to determine their term of office. The term of the first trustees was three years. It was originally established with 18 trustees, who were all directors of the Factory. This position changed subsequently. There have been only 10 trustees since then. Dr. Patil is the permanent Chairman and his wife and two sons were inducted as permanent trustees, obviously by Dr.Patil. Although Dr.Patil has denied that the funds of the Trust were collected from the agriculturist members of the Factory, he has admitted that the funds were collected from the members of the public, who also included the agriculturist members of the Factory. However, beyond proving that the Trust has been converted by Dr. Patil into a private family trust by manipulating its trustees, no other allegation has been proved. The trust deed filed with the application for registering the Trust had incorporated the relevant provisions, which have been utilised by Dr. Patil to make the Trust almost a family affair. The Bombay Public Trusts Act, as it stands today does not bar such trust being registered and operated. This is not the solitary incident of the public trusts being converted into private trusts. Many a trust with a similar concentration of power in a few hands have been



operating legally for the last several years. Hence no legal objection can be raised to the constitution and the management of the said Trust. The question still remains as to whether, atleast those in public life, should not run public trusts as public institution and also appear to do so. This is the least obligation cast upon them by the public life which expects a model conduct from them for others to follow.

D) **NOTICES UNDER SECTION 8B OF THE COMMISSION OF INQUIRY ACT,1952,**

a) **Shri. M.B.Joshi, the Joint Registrar in the Office of the Sugar Commissioner, Pune**

66) He was issued notice under section 8B for having made contradictory statements in his report dated 2.11.2002 with regard to the involvement of two persons, namely, Amarsinh Patil and Amol Patodekar in the supply of the drip irrigation sets to the farmers.

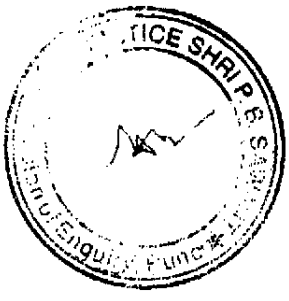
67) One Shri. Amarsinh, the brother of Dr.Patil had an agency for the sale of the drip irrigation sets belonging to Netafim Irrigation India Pvt. Ltd. Admittedly, there was an agreement between Netafim Irrigation India Pvt. Ltd. and the Factory for the supply of the drip irrigation sets to the farmers through M/s. A. B. Agro Tech belonging to Amarsing (exhibit 120). Shri. Joshi knew that Amarsinh was Dr.Patil's brother, and

he has in so many words stated so in his report. The self-contradictory statements made by him are obvious from the following questions and answers before the Commission. He was asked as to what did he find in the inquiry he was asked to conduct by the Sugar Commission. To this, he replied that he has written about it in his report. He was then confronted with the contents of page 2 of his report on the Drip Irrigation Scheme, where it is stated as follows:-

"Since the agency of Drip Irrigation System for the supply of drip irrigation sets was with Amarsinh Patil and Amol Patodekar, his nephew, it appears that there was a irregular transaction in collusion with each other and this issue cannot form a part of the inquiry."

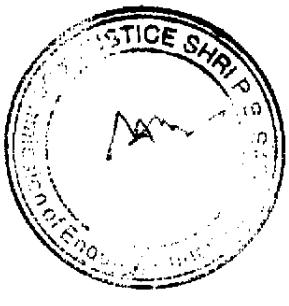
He was asked whether this statement was not inconsistent with his duty?"

To that he replied that the sentence was wrongly written. What he wanted to say was that the irregular transaction seems to have been done by collusion, and it cannot be an issue of the inquiry. Then he was asked as to whether there was an irregular transaction in that matter. To that he has replied that he had not given his opinion about it in his report. He was then asked as to why he had not given his opinion? To that he replied that,



that was because there was no irregular transaction. That an officer of his rank should give such self-conflicting answers is shocking, and it is obvious that he had tried to shrink from his responsibility. He was next asked that in his report he had stated that for the said scheme, namely, the Drip Irrigation System, an amount of Rs.17,94,62,633/- was shown as loan in account No.2B of the Factory, and Rs.16,72,14,002/- were paid through the Factory to the concerned companies. What had happened to the balance amount, had not been written by him in the report and what was its reason? To that, he replied that it was not possible to state the reason, but that he had not mentioned anything in his report about the said amount, is a fact.

68) It has, therefore, to be concluded that Shri. Joshi had adopted deliberately a supercilious approach to the inquiry and did not think it necessary to pay attention even to the rudiments of the job entrusted to him. This shows something more than a cavalier approach to the matter on his part. He has avoided his obvious and imperative duty for reasons best known to him, and has thus displayed an utter lack of the sense of responsibility, which goes with the office he holds.



(b) **Shri. Sanjay Janardan Bhagat, the then Executive Engineer in the Office of the Sugar Commissioner, Pune**

69) He was holding the office of the Executive Engineer in the office of the Commissioner of Sugar at the relevant time. He was supposed to give his opinion with regard to the technical feasibility of the projects which were submitted for sanction by the sugar factories. On 2.12.2000 the Factory submitted the proposal (exhibit 200) and sought permission for accepting tenders for civil works of (I) Boiler House and (ii) Mill House. The costs estimated and sanctioned by the Sugar Commissioner earlier by his letter (exhibit 190) as has been deposed to by the Sugar Commissioner, Shri. Vijaykumar, had increased and this increased costs required an approval by him as a Sugar Commissioner. However, the letter sent by the Factory for getting the approval of the proposal was never placed before the Sugar Commissioner. On the other hand, it was directly approved by Shri. Bhagat and sanction was given by him by his letter dated 8.12.2000 (exhibit 200).

70) On 10.3.2001, the Factory submitted the proposal for civil work of Power House and Turbine Platform Foundation for getting sanction for the increased costs above the already sanctioned costs. The sanction asked for was for 13 per cent

increased costs. This proposal was also not placed before the Sugar Commissioner and, on the other hand, was directly sanctioned by Shri. Bhagat on 10.4.2001 (exhibits 201).

71) Shri. Bhagat has admitted that he had power to give only technical sanction to the proposals for the increased costs. The administration and financial sanctions had to be given by the Sugar Commissioner. When he was asked as to why in the circumstances he sanctioned both the proposals which included the administrative as well as the financial sanction, he replied that he had done so since his predecessor in office had also given such sanctions. He has, however, not given the Commission any past instances of similar sanctions. To the specific question put in that behalf, Shri. Bhagat replied that he had no knowledge that the sanction which he gave also implied the administrative and financial sanction. This answer is not convincing. It is not as if Shri. Bhagat was a novice to the subject when the relevant proposals came from the Factory for the sanction. He has admitted that he knew the difference between the technical sanction on the one hand and the administrative and financial sanction, on the other.

72) We are, therefore, constrained to observe that in the circumstances, the compulsion which he felt to give the

sanction directly without approaching the Sugar Commissioner has more to be read in it. He can not take shelter for it in his pretended ignorance in the matter. Shri. Bhagat has thus clearly exceeded the limits of his power for reasons which he alone knows. He has thus failed to observe the rules, and even the usual prudence, which goes with his office.

c) Shri. Anant Kulkarni, the then Sugar Commissioner, Pune and presently working as Joint Secretary, Loksabha Secretariat, Parliament House Annexe, New Delhi

73) Shri. Kulkarni was the Sugar Commissioner, Pune, between 4.10.2001 to 7.4.2002 and 12.6.2002 to 10.7.2002. By a letter dated 30.8.2001 (exhibit 204), the Factory had applied to the Sugar Commissioner for sanction of the co-generation plant of 60 MWs. Shri. Tambe, the Joint Director in the Office of the Sugar Commissioner, had sent this proposal to Vasantdada Sugar Institute (VSI) of Pune for scrutiny. It was pending there, and was not received back by the Office of the Sugar Commissioner. It appears that in the meanwhile, Shri. Kulkarni took over as the Sugar Commissioner as stated above, on 4.10.2001. On 24.10.2001 (exhibit 205) the Factory sent another proposal to the Sugar Commissioner for the cogeneration plant of 8 and 6 MWs. Shri. Kulkarni by his letter dated 31.10.2001 (exhibit 208)

granted administrative and financial approval for 60 MWs co-generation plant, costing Rs.164.85 crores without waiting for the appraisal of the VSI where the Sugar Commissioner's request for appraisal was still pending. By his letter dated 28.1.2002 (exhibit 161), Shri. Kulkarni cleared the proposal for 6 and 8 MWs plant, costing Rs.25 crores without even sending the project for appraisal to the VSI or the National Federation of Co-operative Sugar Factories Ltd., Delhi (NFCSF) or MITCON. It is necessary in this connection to mention that the Sugar Commissioner on 5.7.1996 had issued a circular (exhibit 209) to all the sugar factories in the State requiring that the proposals involving capital expenses involving any amount, was to be forwarded to the Sugar Commissioner only after it was appraised by the VSI. So also, by the circular, dated 23.4.1998 (exhibit 210), the Sugar Commissioner had categorically instructed that the technical work of any nature had to be approved by VSI or NFCSF, otherwise no permission would be given for carrying out such work nor will the State Level Committee accept the tenders for the same. The sugar factories were further warned that they must take precaution against employing any private consultants for the technical work, otherwise the concerned persons would be held responsible and proceeded against. It

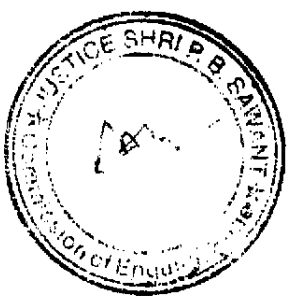
cannot be disputed that both these circulars issued by the predecessors of Shri. Kulkarni were binding on him, unless they were withdrawn or modified. Shri. Rajeev Agrawal who had issued these circulars was occupying the post of the Secretary of Co-operation Department when Shri. Kulkarni was the Sugar Commissioner. Yet, Shri. Kulkarni has taken the position in his written reply as well as his oral deposition before the Commission, that the circular dated 5.7.1996 was not brought to his notice when he cleared both the proposals. It is to be remembered in this connection that firstly, his predecessor had already sent the first project of 60 MWs to the VSI for appraisal. Atleast this information with regard to that project must be in the file, which he cleared. Secondly, his contention that he had asked Shri. Tambe, the Joint Director in the Office of the Sugar Commissioner about the status of the VSI report, and Shri. Tambe had informed him that he had sent it to the VSI by mistake, although it was not required to be sent to that institute, shows that Shri. Kulkarni was aware of two things, firstly that the project was awaiting clearance from the VSI. Secondly, his subordinate had referred the project for the appraisal to the VSI. If this is so, this was obviously by virtue of some instructions received either from the higher authorities or

issued from his own office. Yet, he was satisfied only with Shri. Tambe's answer that it was sent to the VSI by mistake, and did not care to investigate further. Shri. Tambe has not been examined by him and we have to rely on Shri. Kulkarni's words that Shri. Tambe had sent the proposal to the VSI, according to Shri. Tambe, by mistake. Suffice it to say that we are not satisfied with this explanation given by Shri. Kulkarni. As has come on record through the deposition of Shri. Vijaykumar, the Sugar Commissioner, there was also a circular dated 23.4.1998 issued by Shri. Kulkarni's predecessor Sugar Commissioner, Shri. Rajeev Agrawal, which as pointed out earlier, had made it compulsory to take advice on all technical works from the VSI and NFCSF (exhibit 210) and implement them only according to their advice. Shri. Kulkarni's contention that he was told by Shri. Tambe, his subordinate, that only the projects for modernisation, expansion and by-products of sugar factories alongwith the proposal of new sugar factories, were required to be sent to the VSI for their appraisal and scrutiny, has not been substantiated. Shri. Tambe has not been examined nor any Government Resolution omitting or excluding the co-generation plants from the appraisal and scrutiny from the VSI were produced. His second contention that according to the State

Government's resolution dated 17.11.2000 (exhibit 272) only 4 criteria are laid down for sanctioning that projects, viz. (i) the bye-laws of the Factory must have a provision for co-generation projects, (ii) the proposed joint venture must be beneficial to the Factory, (iii) the proposed project development agreement must be according to law and (iv) the no-objection certificate must have been obtained from the concerned Gram-Panchayat. This contention forgets that the said criteria are laid down for the joint ventures between a co-operative sugar Factory and a private organisation. The concluding part of the G.R. refers to the independent venture by a co-operative sugar factory, and that part makes it clear that after satisfying the said criteria and obtaining the permission from the other departments referred to in the earlier part of the Resolution, which are necessary for the joint venture, the sugar factory when it undertakes the venture on its own has to obtain the permission of the Task Force constituted by the said Resolution and then send it for final sanction to the Central Government. Yet, Shri. Kulkarni did give his own sanction without following the instructions in the Government Resolution on which he is now relying. What is more, Shri. Kulkarni while giving sanction had not qualified it by referring to the permission which was

necessary to be obtained under the Government Resolution from the Task Force and the Central Government. For all these reasons, we find that the defence raised by Shri. Kulkarni for sanctioning the two projects without obtaining the necessary appraisal from the VSI, is untenable, both in fact and in law. We wonder as to why he was in that haste in granting the sanctions to the two co-generation plants involving enormous costs of Rs.164.85 crores and Rs. 25 crores, respectively.

74) Shri. Kulkarni was also required to answer as to why he had failed to take action on the report, dated 10.6.2002 (exhibit 173), of the Special Auditor Co-operative Societies, Sugar. The Auditor had observed in his report that the Factory had obtained permission of the Sugar Commissioner for co-generation project on certain conditions. Thereafter, the Factory obtained loan from the ODCC Bank of the amount of Rs.14.85 crores but the loan was utilised for the daily expenses and not for the purpose for which it was obtained. Similarly, the Factory had obtained permission from the Sugar Commissioner for the expansion of work and had also obtained loan for the purpose from the ODCC Bank. But the Factory had executed work of more amounts to the extent of Rs.717.81 lacs than was sanctioned by the Sugar Commissioner. Likewise, in the sugar-



export, the Factory sustained a loss of Rs.53,75,009/- and for that purpose the Factory was responsible.

75) Shri. Kulkarni's explanation for not taking action on the report is firstly, that he took the charge as the Sugar Commissioner on 12.6.2002, and was there only upto 10.7.2002. The report of the Special Auditor was received in the office on 17.6.2002. Hence, he worked as the Sugar Commissioner only for 23 days after the receipt of the said report. His second explanation is that immediately on receipt of the report, he had made an endorsement on it "Put up on file" and had marked it to Shri. D. L. Oulkar, Joint Director (Finance), as Shri. Tambe, Joint Director (Administration), to whom the report would have ordinarily been marked was on leave. The file then went to Mrs. Rupali Deo, Assistant Director (Administration). She suggested an action under section 83 of the Maharashtra Co-operative Societies Act. Shri. Oulkar, however, suggested action under section 88 of the Act. Shri. Jadhav, instead of making any recommendation only submitted the file "for guidance" to him. He then called all the officials, including the then Directors, Shri. Jadhav, Shri. Oulkar and Mrs.Deo and handed over the file to Shri. Jadhav "giving directions to take expeditious action in the matter as per law". This happened on 18.9.2002 or

19.9.2002. He admitted that he understood the gravity of the contents of the report (exhibit 173). The following questions and answers between Shri. Kulkarni and the Commission will reveal the kind of approach Shri. Kulkarni had adopted on the subject:-

"Answer: - When I went through the letter/report Exh. 173 of 17th June, 2002 I understood the gravity of the contents of that letter.

Question: - When you held the conference of your officers on 18th or 19th of June, 2002 with regard to the said letter, why did you not take the decision yourself as to the further action to be taken?

Answer: - I gave direction to the Director, Administration to suggest action in accordance with the provisions of the Act as applicable to the letter received from the Special Auditor.

Question: - Why is it that you could not suggest what action should be taken under the Act ?

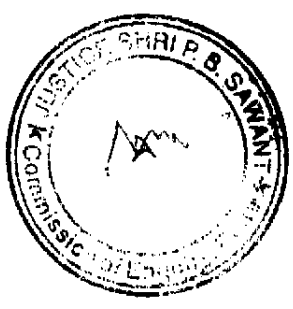
Answer: - One of the reasons why I did not suggest action was that there were other issues in my hand. The other reason was that it could have been a hasty decision.

76) Even if he had other issues on hand, that was no excuse for not taking the decision in the matter at the relevant time. Shri. Kulkarni clearly failed in his duty to take the necessary decision and put the legal process in motion.

CONCLUSIONS:-

The above discussion, therefore, leads to the following conclusions.

(i) In all 26950 bags of sugar i.e. 2695 metric tonnes of sugar, which were meant for export, were preplanned to be sold in the domestic market and in fact, they were sold in the domestic market, namely, at Kolkata, Latur and Pune. This was also a fraud played on the Central Government, which had released the sugar for export. The monies received from the domestic sale of the sugar, over and above the price at which it was to be exported, have not been credited to the Factory's accounts, but have been misappropriated. The Central Excise Duty was also sought to be evaded, although it came to be deposited with that department only after a notice from the department was received. There was thus a large-scale scam in the matter of the sugar meant to be exported. Dr. Patil as a Chairman of the Factory, cannot be said to be ignorant of this

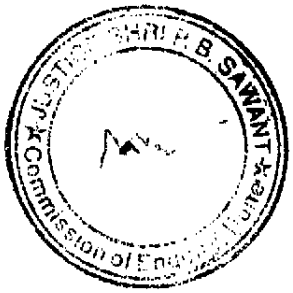


scam. He has to be held responsible as one of the parties to the said scam, and as such guilty of all the offences involved in the same.

(ii) In all 23166 bags of sugar i.e. 2316.6 metric tonnes, out of the sugar pledged with the ODCC Bank were lifted by the Factory management from the godown illegally and in collusion with the Bank management. This was a fraud played on the Bank and its shareholders, to which the Factory Management, was a party. Dr. Patil as a Chairman of the Factory is, therefore, guilty of the offence involved in the same.

(iii) The above sugar was sold by the Management of the Factory on credit to various parties contrary to the provisions of Section 46B of the Maharashtra State Co-operative Societies Act. The act was also contrary to the specific resolution passed by the Board of Directors of the Factory, prohibiting sales of sugar on credit, only a short time before the said sale. The selling of sugar on credit was, thus, illegal. Dr. Patil as a Chairman of the Factory is responsible for this illegality.

(iv) The sugar in all worth Rs.27,71,134.38 was misappropriated from the Factory's sugar shop run in the main premises of the Factory, from the year 1996 to 2003. The Factory management is responsible for the said defalcation, and

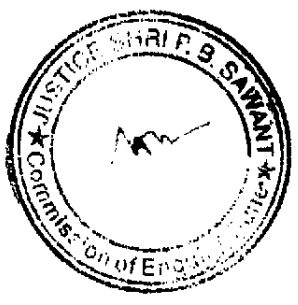


Dr.Patil being the Chairman of the Factory is also responsible for the same.

(v) The monies sanctioned by the Sugar Commissioner, namely, Rs.84,20,433/- specifically for paying the Factory-subsidy to the farmers who had purchased the Drip Irrigation Sets was diverted without the sanction of the Sugar Commissioner, for the day to day expenses of the Factory. This was clearly illegal on the part of the Factory management. Dr. Patil as the Chairman was responsible for this illegality.

(vi) The scheme made by the Factory management for paying Factory-subsidy to the farmers, who purchased the Drip Irrigation Sets, was itself illegal. This was so because the funds which belonged to all the members of the Factory were sought to be distributed only among those who had purchased the Drip Irrigation Sets and at the cost of the farmers who had not opted to purchase such sets. The scheme itself was, therefore, partisan and Dr.Patil being a Chairman of the Factory was a party to this illegality.

(vii) While pursuading the farmers to purchase the Drip Irrigation Sets, they were not informed that besides the cost of the Drip Irrigation Set, the installation of the Drip Irrigation System in their lands also involved expenses of sizeable amounts

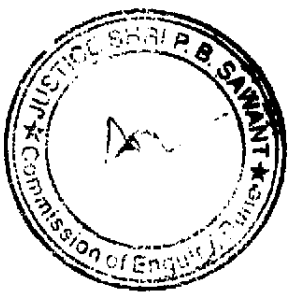


on such adjuncts, as digging of the well, setting up of an overhead tank, installing pump sets, and ventury etc. Being thus misled, for want of information on the said aspect of the drip irrigation system, the farmers took loan from the ODCC Bank for the cost of the Drip Irrigation Set, at the interest rate of 16 per cent per annum. The costs of the additional adjuncts as stated above, had then to be unwillingly incurred by them, having first installed the drip irrigation set and this too by taking loan from the Bank at the same rate of interest. Had they been informed of the said additional costs and the loan that they will have to take to meet the said costs, the farmers already deep in debts would not have taken upon themselves the unbearable financial burden.

The evidence also shows that some of the farmers, who had purchased the Drip Irrigation Sets, had not received the government subsidy and some of them had received only a part of the subsidy. Several farmers are yet to receive any subsidy.

This was a failure on the part of the management, and Dr.Patil cannot absolve himself of the responsibility for the said failure.

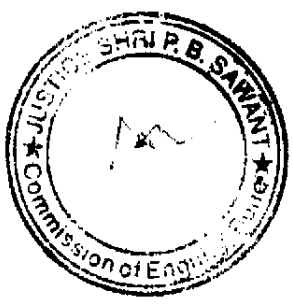
(viii) Although Dr.Patil became the Minister of the Government of Maharashtra in October, 1999, he failed to resign



till 11.7.2002, from the office of the Chairman of the Factory, when it was incumbent upon him to do so under the provisions of Section 73A(1) read with 73A(6) of the Maharashtra Co-operative Societies Act. This was clearly an illegal omission on his part. What is further, even after he resigned as a Chairman he continued to act as de facto Chairman usurping the powers of the Chairman. It is to facilitate his acting as such Chairman that the post of the Chairman was not filled in by election as required by the law. This was clearly an illegal act on his part.

(ix) Dr.Patil, on his own admission, as Chairman of the Factory, had attended only 16/18 meetings out of 146/147 meetings of the Board of Directors. The bye-laws of the Factory required him as a Chairman of the Factory to attend to its day to day management. He was thus guilty of the failure to discharge his duties as a Chairman. This was a clear instance of maladministration of the Factory, on his part.

(x) Dr. Patil was guilty of trying to pressurise Shri. Vilas Pawar, to make statements against Shri. Pawanraje Nimbalkar, who was on inimical relations with him. Dr. Patil was, therefore, guilty of trying to abuse his power and position as the Director of the Factory and also as the Minister of the State Government.



(xi) The following amounts collected as contribution from the members of the Factory were not paid to the cause for which they were collected:-

(a) Rs.16,01,742/- collected for Sakhar Sankul.

(b) Rs.3,70,927/- collected for Chief Minister's Relief Fund.

(c) Rs.8,53,928/- collected towards Gharkul Project.

(d) Rs.28,78,006/- collected towards Small Savings.

(e) Rs.15,05,153/- collected in 1999 as Kargil War Fund, were paid to the Government only on 5.6.2004.

(f) Rs.10,60,708/- collected for Gujrat Flood Affected persons, were paid for the cause only on 7.6.2004.

(g) Rs.10,30,336/- collected for Gujarat Earthquake Relief Fund in 2001 were paid for the cause only on 7.6.2004.

This failure to pay the amounts for the cause for which they were collected, or to pay them belatedly during the proceedings of the present Commission, were acts of irregularity and of patent maladministration.

(xii) The petrol pump run by the Factory has been incurring losses. There is no explanation given for the losses. That shows gross maladministration.

(xiii) Although the distillery-contractor Shri. Nanasaheb Patil, the brother-in-law of one of the Directors of the Factory, Shri. Pawanraje Nimbalkar, had committed defaults in making the contractual payments, his contract was not terminated as per the conditions of the contract, and Rs.3,70,000/- have still remained to be paid by him to the Factory. This was highly irregular and is an instance of maladministration.

Dr. Padamsinh Patil is, therefore, guilty of corrupt practices on account of each of the acts mentioned at (i), (ii), (iii), (iv), (viii) and (x) above.

Dr. Patil is guilty of maladministration on account of each of the acts mentioned at (v), (vi), (vii), (ix), (xi), (xii) and (xiii) above.

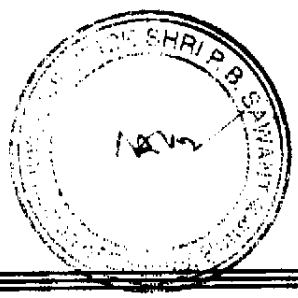
Place: Pune

Date: 22nd February, 2005

[Justice P.B.Sawant (Retd.)]
Commission of Inquiry

CHAPTER IV

ALLEGATIONS AGAINST SHRI. SURESH JAIN



CHAPTER IV

ALLEGATIONS AGAINST SHRI. SURESH JAIN

The allegations of corruption and maladministration against Shri. Suresh Jain, Minister (Food and Civil Supplies) are in connection with three institutions, namely, Jalgaon District Central Co-operative Bank (hereinafter referred to as the JDCC Bank), Jalgaon Municipal Council (hereinafter referred to as the JMC) and Jalgaon Khandesh Bhookampa Sahayata Nidhi (Gujarat) Trust (hereinafter referred to as the Trust)

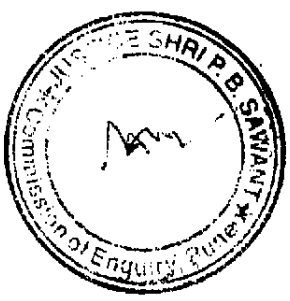
2) The opponent Shri. Suresh Jain against whom the inquiry is ordered as per the order of reference is a known figure in the political life of the State and a prominent personality in the social life of Jalgaon District and in particular of Jalgaon town. He entered the political life, as stated by him, at the age of 20, and has since been there till date. He became a member of the Jalgaon Municipal Council on 15.5.1985, and also its President at the same time, and continued to be the President till 18.7.1994. He became a member of the Legislative

Assembly of the Maharashtra State subsequently in the year 1995, and also a Minister in the State Government thereafter. In the year 1999, he contested the election to the Legislative Assembly on the ticket of the Nationalist Congress Party (NCP) and again became a Minister and continued as Minister till the elections held in 2004. He also became a Minister in 2004. He was a director of the Jalgaon District Central Co-operative Bank Ltd. for 11 years from 21.2.1991 to 27.9.2003 and also its Chairman during this period, except for the period from 11.5.1997 to 5.9.2000.

3) According to him, he belongs to a business family, and was looking after the family business during his young age. Since the age of 36 years, he is full time occupied in the business of share trading and estate-agency, and also in politics. Till 1983, he was living in a joint family i.e. with his mother and brothers, and after 1983, the joint family being partitioned, he and his family stay with his mother at 7, Shivajinagar, Jalgaon (page 57). The said property stands in the name of his mother, and has among others, the following tenants: M/s. Khandesh Builders and Krishi Dhan Cattle Feed Pvt. Ltd. These two companies have printed on their letter-head not only the said address but also the telephone number, fax number and E-Mail

address of the opponent (pages 25 and 26). It has also come on record that one of the promoters of M/s. Khandesh Builders is his sister-in-law, namely, his brother's wife, Smt. Yashomati Jain. The opponent has admitted (page 57) that he has brother-like relations with Shri. Jagannath alias Nana Wani and Shri. Rajendra alias Raja Mayur. These two persons, admittedly, look after and manage the affairs of his mother's property. The said two persons are also in the management of both the companies, namely, M/s. Khandesh Builders and Krishi Dhan Cattle Feed Pvt. Ltd. On his own admission (pages 20, 21 and 27), Shri. Jain's Hindu Undivided Family and his wife and elder son and also son's company M/s. Emco Ltd. had huge financial transactions with M/s. Khandesh Builders, running into crores of rupees. He has further admitted that Shri. Jain's Hindu Undivided Family had substantial financial transactions with M/s. Krishi Dhan Cattle Feed Pvt. Ltd.

4) Shri. Jain has claimed firstly that he does every work, which he undertakes, in a disciplined manner and after studying its details, and then deciding firmly the policy to be adopted. Thereafter, he does not swerve from it (page 48, para 62). He has further stated (page 44) that "it is necessary to defy the law, many times in the interests of the society."



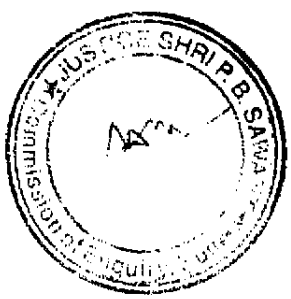
5) It is in the light of this background that the allegations of corruption and maladministration against Shri. Jain's three institutions, namely, Jalgaon District Central Co-operative Bank Ltd, Jalgaon Municipal Corporation and Jalgaon Khandesh Bhookampa Sahayata Nidhi have to be examined.

A) JALGAON DISTRICT CENTRAL CO-OPERATIVE BANK LTD.

6) First, we will take the allegations in respect of the Jalgaon District Central Co-operative Bank Ltd. (hereinafter referred to as the JDCC Bank).

a) IBP Facilities

7) The first of the allegations is in respect of the Inland Bill Purchasing System (hereinafter referred to as the IBP) introduced by the opponent for the first time in 2002 in the JDCC Bank during his tenure as the Chairman of the JDCC Bank. The IBP facilities envisage that a party presenting an Inland bill, will be advanced temporary loan against it. In such a transaction, the bills constitute the security for the advances made, and therefore, it is essential that the bills must pertain to genuine trade transactions. The accommodation bills not backed by any trade transactions have to be distinguished from the genuine trade bills against which only the IBP facility is



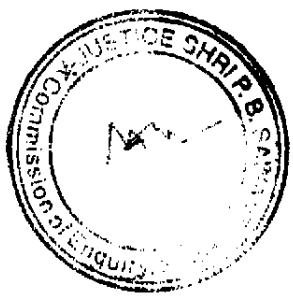
given. In this connection, it is also necessary to refer to the relevant bye-law of the Bank, which in terms, emphasises this aspect for extending the facility.

Bye-law No.3 (16) reads as follows:

"To draw, accept, endorse, buy sell and negotiate inland bills of exchange and other negotiable instruments, which are genuine trade bill only. In no case the bank will buy, sell or negotiate from an individual person, whether a member or not any bill payable otherwise than "on demand". In the case of demand bills, limits for each party should be fixed every year by the Board of Directors. The business under this bye-law shall be conducted by the Bank in accordance with the rules framed by the Board for the purpose and approved by the Registrar, Co-operative Societies, M.S. Poona."

8) The JDCC Bank did frame the rules (exhibit 52) though belatedly, for such transactions. There is nothing on record, however, to show that these rules were approved of by the Registrar of the Co-operative Societies.

9) The JDCC Bank's Resolution dated 6.12.2002 with regard to the IBP facility (exhibit 52) has some interesting as well as important features as follows:-



(i) The individuals could be extended the maximum facility upto Rs.25,00,000/- and for the institutions, firms etc. the maximum facility would be upto Rs.2 crores. However, if in exceptional circumstances, they required more facility, the enhanced facility could be granted by the Chairman of the Bank. However, the limit of such enhancement is not mentioned in the resolution.

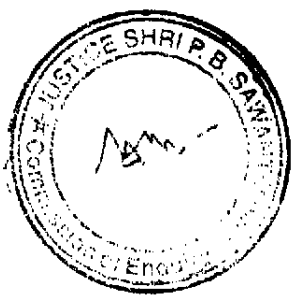
(ii) The facilities could not be advanced against the cheques/bills drawn on any branch of the JDCC Bank.

(iii) The value of security against the facility has to be one and a half times the loan facility obtained by the party. If the security consists of immovable property, its value has to be determined by the Government Officer, (what is probably meant by the resolution is that it should be approved by the valuer approved by the Government) and the property has to be mortgaged by equitable mortgage in favour of the bank. If the cheque/bill presented by the party for the facility is returned, the party has to be blacklisted permanently, and no IBP facility should be given to such party in future. The IBP facilities are to be extended only when the bank has funds available for the purpose.

This policy, according to bye-law 3(16) (exhibit 36), as pointed out above, was to be approved of by the Registrar. The approval, however, does not seem to have been obtained.

10) The National Bank for Agriculture and Rural Development (hereinafter referred to as the NABARD) has issued a circular dated 21.6.1997 (exhibit 60) in the matter of the extension of the IBP facilities by the Co-operative Banks. It mentions the precautions to be taken, among other things, for extending the IBP facility. The Reserve Bank of India (hereinafter referred to as the RBI) has also, in its Manual on Advances by the Co-operative Banks, given instructions in the matter (exhibit 60). The RBI has also issued another circular dated 28.7.1987 (exhibit 61) for taking precaution against the kite flying operations.

11) The JDCC Bank officially started giving the IBP facilities after 6.12.2002, and continued them till the Administrator could take charge of the Bank in April/May, 2003. The evidence on record shows that the facility in question given by the JDCC Bank revolved round (i) only four institutions, namely, M/s. Khandesh Builders, M/s. Krishi Dhan Cattle Feed Pvt. Ltd., M/s. Jain Irrigation System and M/s. ECP Housing, which institutions took a lion's share of the facility, and (ii) only



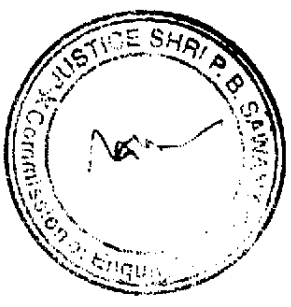
three individuals, namely, Shri. Mansukhlal Jain, Smt. Leelavati Mansukhlal Jain and Shri. P.C. Patil.

12) The Krishi Dhan Cattle Feed Pvt. Ltd. discounted cheques from the JDCC Bank, drawn by M/s. Khandesh Builders on it, to the extent of Rs.156.63 crores during the period 1.4.2002 to 31.3.2003 (exhibit 79).

13) M/s. Khandesh Builders discounted cheques from the JDCC Bank drawn by Krishi Dhan Cattle Feed Pvt. Ltd. on it, to the extent of Rs.94.18 crores, Rs. 98.03 crores and Rs. 10.96 crores during the years 2002-2003, 2001-2002 and 2000-2001, respectively (exhibit 79).

14) M/s. Jain Irrigation System discounted the cheques from the JDCC Bank drawn in its name by the ECP Housing to the extent of Rs.11.90 crores and Rs.50 lacs during the year 2002-2003 and 2001-2002, respectively, and the M/s. ECP Housing discounted the cheques drawn by M/s. Jain Irrigation on it to the extent of Rs.19.25 crores during the year 2002-2003 (exhibit 79).

15) It has to be noted here that Shri. Rajendra Mayur is the common director in M/s. Khandesh Builders, M/s. Krishi Dhan Cattle Feed Pvt. Ltd. and M/s. ECP Housing (exhibit 79).

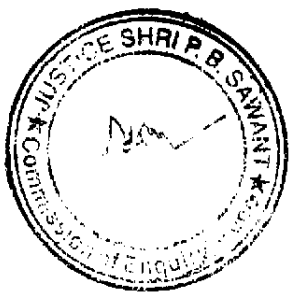


16) As regards the three individuals, who had availed of the facility, Shri. Mansukhlal Jain and Shri. P.C. Patil are the directors of the JDCC Bank. Smt. Leelavati Jain is the wife of Shri. Mansukhlal Jain. In one case, Smt.Leelavati Jain availed of the discounting facility by presenting her own cheques drawn on Suraj Enterprises, of which she was the proprietor. Shri. P.C. Patil made several defaults in payment amounting to Rs.6,00,000/-, for which there are criminal proceedings pending against him in the Court. It has further to be noted here that Shri. P.C. Patil had availed of the facility on the basis of a self-drawn cheque on another branch of the JDCC Bank (para 20 of Shri. Chari's deposition) and he was granted the same without objection and even without verifying from the branch concerned, whether he had any balance in his account and to what extent.

17) The evidence also shows that M/s. Khandesh Builders had availed of the IBP facilities in the year 2000-2001 to the extent of Rs.10.96 crores, and in the year 2001-2002 of Rs.98.03 crores much before the Bank had decided to extend the said facility by its resolution dated 6.12.2002 (exhibit 52). Although separate figures are not available, it appears that as pointed out above, M/s. Khandesh Builders availed of the said

facility for the year 2002-2003 to the extent of Rs.94.18 crores, part of which was also obviously before 6.12.2002.

18) The above evidence shows that the IBP facility created by the JDCC Bank was availed of only by the four institutions mentioned above, and out of that the major portion of the facility was hogged by M/s. Khandesh Builders and M/s. Krishi Dhan Cattle Feed Pvt. Ltd. As Shri. Jain has admitted, all the directors of the said four companies were his friends of long standing, and out of those companies, as pointed out above, M/s. Khandesh Builders and M/s. Krishi Dhan Cattle Feed Pvt. Ltd. had their offices in his mother's property where he was also staying, and both the companies were using his address, telephone number, e-mail and fax number on their letter-head. No further comment is necessary to point out the intimate relationship between Shri. Suresh Jain and the said companies. The evidence also shows that M/s. Khandesh Builders and M/s. Krishi Dhan Cattle Feed Pvt. Ltd. were given the facilities for discounting, for amounts far in excess of the value of the securities given by them. As regards M/s. Khandesh Builders, it had given the security of 7, Shivajinagar, Jalgaon, which is the property of Shri. Jain's mother. The valuation report of the said property submitted to the JDCC Bank states the total value of



the property as Rs.20,71,20,000/-. The report further states in terms that the property is without tenants and the valuation of the property is done accordingly. This is contrary to Shri. Suresh Jain's stand that M/s. Khandesh Builders and M/s. Krishi Dhan Cattle Feed Pvt. Ltd. were tenants in the property.

19) M/s. Krishi Dhan Cattle Feed Pvt. Ltd. had given as security for the facility, a property, at Chalisgaon, which belonged admittedly, to Shri.Jain's mother. The property consists of a school building upon a land on which other buildings are also constructed. The valuation of the property as per the valuation report is Rs.9,29,71,500/-. This is also the report made by the same valuer and on the same day as the report of his mother's property viz. 7, Shivajinagar, Jalgaon. Both the reports are at exhibit 85. It is interesting to note in this connection that M/s. Khandesh Builders was sanctioned the limit of Rs.30 crores and M/s. Krishi Dhan Cattle Feed Pvt. Ltd. was sanctioned the limit of Rs.12 crores. Both these companies had overdrawn the loans beyond the sanctioned limits at some points of time. M/s. Khandesh Builders had total drawings outstanding as on 19.3.2003 to the extent of Rs.33.34 crores and M/s. Krishi Dhan Cattle Feed Pvt. Ltd. owed Rs.13.61 crores as on 2.2.2003 (pages 28 and 29 of Shri. Jain's deposition). It may

also be mentioned here that the valuation report of the properties given as security by the two companies was not accompanied by the search report of the property (page 9 of Shri. Chari's deposition). What is further, M/s. Khandesh Builders were in losses and M/s. Krishi Dhan Cattle Feed Pvt. Ltd. were showing only a nominal profit at the time they made the applications for the IBP facilities.

20) It is not disputed that the limits for the IBP facility for these two companies were sanctioned from the beginning till the end, from time to time directly by Shri. Suresh Jain himself in advance of the Board's sanction, and without inviting any comments from the office of the JDCC Bank. The said limits were also sanctioned the very day they were applied for. The sanctions given by Shri. Suresh Jain were placed before the Board of Directors, after disbursing the amounts to the said companies.

21) It has come in the evidence that three cheques presented by M/s. Khandesh Builders on different occasions for discounting, were returned on 26.12.2000, 19.3.2002 and 30.4.2003 respectively, and yet the said company was not blacklisted as required by the policy (exhibit 52) evolved by the JDCC Bank (page 30 of Shri. Jain's deposition).

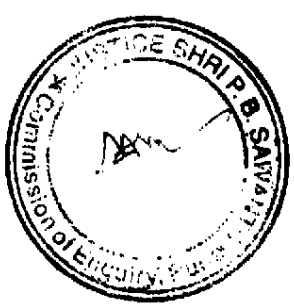
22) What is further interesting to note is that as admitted by Shri. Jain himself (page 30), no publicity was given when the JDCC Bank started the IBP facility. It appears that it was kept as a closely guarded secret for the benefit of the select few, namely, the said four companies and the three individuals.

23) Shri. Jain's defence for starting the IBP facility, when admittedly there was no surplus fund with the JDCC Bank, and when the JDCC Bank was always taking overdrafts from the Maharashtra State Central Co-operative Bank, is that although the JDCC Bank was paying to the Maharashtra State Central Co-operative Bank interest on the overdrafts taken from it, the interest it was earning by extending the IBP facility was more than it, and, therefore, the transactions resulted in profit to the JDCC Bank. His second defence is that the JDCC Bank had earned, on account of the extension of the IBP facility, a profit of about Rs.4.31 crores which it had not done any time before (Reply Clause No.2). As a business proposition, therefore, the IBP facilities, extended by the JDCC Bank proved beneficial to the JDCC Bank. He also claimed that the JDCC Bank had received back all the monies which it had invested in the IBP transactions, except an amount of Rs.6,00,000/- from Shri. P.C.

Patil, a director of the JDCC Bank, who had also availed of the said facility. This argument ignores that the JDCC Bank is established under a statute, and the statute casts an obligation on the Bank to carry on its affairs according to its provisions. Secondly, the JDCC Bank is also bound by the directions issued from time to time by the NABARD, the RBI and the Co-operative Department of the State Government, and also by the bye-laws of the Bank as well as the policy laid down by the Board of Directors of the Bank.

24) The Maharashtra Co-operative Societies Act requires the bank to carry on its affairs according to its bye-laws, the decisions taken by the Board of Directors, and also by the directions issued from time to time by the Co-operative Department. In the present case, bye-law 3(16) of the JDCC Bank requires that the relevant business has to be carried on in accordance with the rules framed by the Board for the purpose, and approved by the Registrar of the Co-operative Societies. Admittedly, in the present case, the rules framed by the Board (exhibit 52) were not got approved from the Registrar, Co-operative Societies, and it is according to these unsanctioned rules that the entire IBP facility transactions were carried on by the Bank. Secondly, even according to the rules framed by the

Board of Directors of the JDCC Bank, the IBP facilities were to be extended only if there were surplus funds with the JDCC Bank. It has come in the evidence of Shri.Chari, the officer of the NABARD, who had inspected the JDCC Bank under section 11(1) of the Banking Regulations Act, 1949, that there was no liquidity with the JDCC Bank during the relevant period to extend the said facility, and he has mentioned about it in his report dated 19.8.2003 (exhibit 46). The JDCC Bank in its compliance report dated 10.9.2003 (exhibit 54) of the NABARD's inspection report, has in terms admitted that there was no liquidity with the JDCC Bank as pointed out in the report. When confronted with the same, Shri. Suresh Jain stated that the statement made in the compliance report is by the Administrator, and they are not responsible for the said statement. According to him, in fact, there was liquidity with the JDCC Bank (page 31). However, he failed to prove that there was liquidity at the relevant time. Further, as pointed out above, the JDCC Bank had not taken adequate security as per their own policy/rules (exhibit 52). While the policy required the JDCC Bank to take security of the value of one and a half times the value of the IBP facility extended, the security was even less than the value of the IBP facility in the case of M/s.



Khandesh Builders and M/s. Krishi Dhan Cattle Feed Pvt. Ltd. Thirdly, according to the admissions given by Shri. Suresh Jain (page 58), on 10.4.2003 when the order appointing the Administrator was passed, M/s. Khandesh Builderls owed to the JDCC Bank Rs.17.44 crores and M/s. Krishi Dhan Cattle Feed Pvt. Ltd. owed Rs.7.92 crores. However, it appears that during the period in between the date of the order appointing the Administrator, namely, 10.4.2003 and 25.5.2003 on which day only the Administrator could act as such, the entire moneys due from all the four institutions, namely, M/s. Khandesh Builders, M/s. Krishi Dhan Cattle Feed Pvt. Ltd., M/s. Jain Irrigation System and M/s. ECP Housing, were deposited in the JDCC Bank. If these moneys were not so recovered from the four institutions, the amount could as well have remained unpaid. Shri. Suresh Jain has tried to justify his earlier illegal actions by relying upon the subsequent events, namely, that the amounts were, in fact, fully paid. In law, this is no defence for the initial illegal acts.

b) <u>One Time Settlement (OTS)</u>

25) The JDCC Bank has flouted the law by defying the directives given by the NABARD and the RBI in the matter of OTS with the debtors.

26) The NABARD by its circular dated 26.4.2001 (exhibit 53) permitted OTS by the Bank and issued guidelines for the purpose. According to these guidelines, firstly, the settlement would in no case be in regard to the principal amount of the loan given to the parties. The settlement could only be with regard to the interest payable to the Bank on the principal amount of the loan. The settlement with regard to the interest was also to be with regard to the interest due only after 31.3.1998.

27) Further, the OTS Scheme was to apply only to those accounts which were classified as Non Performing Assets (NPA) as on 31.3.1998. The "principal amount", according to the guidelines, meant hundred percent of the outstanding balance in the accounts, inclusive of the interest, as on the date on which the account was classified as NPA as per the NPA norms. Hence, the concession that may be given to the party in OTS would not be with regard to the principal amount as due on the date of classifying the account as NPA.

28) Each bank had to formulate its own policy and guidelines in the matter of such settlement, which policy had to be got approved from the Registrar of the Co-operative Societies. The scheme evolved by the Bank should not be

discriminatory and discretionary. In case of NPAs, where arbitration/execution petitions had been filed and/or a decree obtained and recovery certificates issued, the settlement as per these guidelines would be with the consent of the competent authority i.e. the Registrar of the Co-operative Societies.

29) The Scheme was to be operative upto 31.3.2002 only. The applications received for the OTS by 31.3.2002, had to be processed and the decisions taken thereon at the earliest, but not later than 30.6.2002. The official sanctioning a particular loan/loans could not participate in the deliberations of the committee, if appointed by the Board for bringing about the OTS The OTS so made by the bank had to be reported to the NABARD as well as to the RBI every quarterly.

30) The JDCC Bank had prepared the OTS policy according to these guidelines on 22.9.2001 (exhibit 56). However, the settlement which it made with two institutions, namely, Sant Muktabai Shikshan Sanstha and J.T. Mahajan Soot Girani and which have come on record, were made in defiance of all the above guidelines. In the first instance, a substantial part of the principal amount due from these institutions was waived. It may be noted in this connection that the Chairman of the Sant Muktabai Shikshan Sanstha, Shri. Pralhadrao Patil, was

the Chairman of the JDCC Bank for a long time, and at the time of the said settlement his son, Shri. Ravindra Patil, was the director of the JDCC Bank. Secondly, although a decree of the Court was obtained against Sant Muktabai Shikshan Sanstha, the settlement was made without the consent of the Registrar of the Co-operative Societies. The settlement was also made after the cut off date, on 22.2.2003 (page 18 of Shri. Jain's deposition). As regards the Soot Girani, in the settlement made with it, by even waiving the principal amount, and inspite of the repeated extensions, no amount was received by the JDCC Bank from it (page 36 of Shri. Jain's deposition). The evidence shows that the decretal amount against Sant Muktabai Shikshan Sanstha was Rs.1,65,76,397/- and the amount received by the Bank in the OTS was Rs.31,00,000/- towards the loan, and Rs.4,25,000/- towards the value of the shares of the Bank (page 18 of Shri. Jain's deposition). Thus the settlement was for Rs.31,00,000/- only. As regards J. T. Mahajan Soot Girani, the dues were Rs.15,61,13,000/-(page 35 of Shri. Jain's deposition). It has to be noted that the evidence shows that the Sant Muktabai Shikshan Sanstha had enough assets to pay off their entire dues. It had 100 acres of land in Vidarbha and one Math worth atleast Rs.50,00,000/-, in 1992 (page 53 of Shri. Jain's

deposition). No attempt was made to recover the money by attaching and auctioning the said property. These assets were mentioned by the said Sanstha in the application made by it for the loan. On the other hand, Shri. Jain has in terms admitted (page 36) that they had done such OTSs with about 400 to 500 parties. However, they were not according to the instructions contained in the NABARD's circular (exhibit 53). According to him, the JDCC Bank had made the settlements by taking into consideration its' interests and applying its' own criterion for such settlements (page 36). He has asserted that the Board of Directors had powers to take decisions with regard to the OTS independently of the NABARD's directions (page 54). He has also stated that the Board of Directors can take decisions in individual cases even in violation of the policy, which the JDCC Bank has laid down. He has also admitted (page 54) that the settlement which was done with Sant Muktabai Shikshan Sanstha was against the instructions laid down by the NABARD and also against the policy of the Board of Directors. He has further asserted (page 54) that it was not necessary to send the resolution making the OTS to the Registrar of Co-operative Societies, for approval. He has further deposed (page 54) that he did not know that the policy framed by the Board of

Directors in that behalf had to be approved by the Registrar, Co-operative Societies. This, inspite of what is provided in bye-law No.27 (9) of the JDCC Bank. According to him (page 55), the directions issued by the NABARD and the RBI cannot be observed in practice and, therefore, they took their own decisions. He also stated that even if such settlements were against the directives given by the RBI and the NABARD, they had done the same. According to him (page 55), the guidelines issued by the NABARD and RBI are not binding. He subsequently admitted that (page 67), according to the Supreme Court judgement reported in Central Bank of India v Ravindra and Others : (2001(3) Bank C.L.R. 461(SC) : AIR 2001 Supreme Court 3095), the circulars issued by the NABARD or the RBI have a statutory force and are binding on the Bank.

c) **Advance sanctions by the Chairman, Shri. Jain for the Loans given to different parties and the Jalgaon Municipal Council, the donations given to Jalgaon Bhookampa Sahayata Trust and also for OTS with various parties.**

31) The evidence shows that as the Chairman of the JDCC Bank, Shri. Suresh Jain had given advance sanction to all the loans given to M/s. Khandesh Builders, M/s. Krishi Dhan Cattle Feed Pvt. Ltd, M/s. Jain Irrigation System, M/s. ECP Housing, the Mahaveer Co-operative Credit Society, and the

Jalgaon Municipal Council. The amount of the loans varied between Rs.2 to Rs.30 crores. The loans given to the above institutions were sanctioned by him and also disbursed even before they were placed before the meetings of the Board of Directors. This will also indicate that not only Shri. Suresh Jain was taking arbitrary decisions on his own, but was running the JDCC Bank as a one-man institution, and the directors, for the reasons best known to them, were merely ratifying them. It has also to be noted in this connection that while granting loans to the four companies viz. M/s. Khandesh Builders, M/s.Krishi Dhan Cattle Feed Pvt. Ltd., M/s. Jain Irrigation System and M/s. E.C.P. Housing, Shri. Jain had not even called for the comments/notes of the office, and had sanctioned them on his own.

32) In the case of the loans given to the Jalgaon Municipal Council and the Mahaveer Co-operative Credit Society, the office comments were called for by him. However, against the objections of the office stated in details, Shri. Jain sanctioned the loans, and without giving any reasons as to why he had overruled the office objections. It has also to be noted that the loan given to the Mahaveer Co-operative Credit Society of the amount of Rs.8 crores, during September/October, 2002

was contrary even to the resolution passed by the Board of Directors of the JDCC Bank on 11.3.1996 not to advance any loans to such societies (page 34 of Shri. Jain's deposition). To this resolution he was a party. There is no explanation given by Shri. Suresh Jain as to why he had flouted the resolution of the Board of Directors. In his deposition (page 35), he has defended the said sanction on the ground that otherwise, on account of the rush of the depositors on the said society to withdraw the deposits, the society would have gone in liquidation. It is also admitted by him (page 35) that in the application for loan made by the society to the JDCC Bank on the occasion, the only reason given by it was that there was a need for loan. He has further admitted (page 35) that out of the loan of Rs.8 crores given to the said society, Rs.7,94,33,000/- towards principal and Rs.1,61,67,000/- towards the interest, are still outstanding.

33) It may be mentioned here that Shri.Jain has been shown as an advisory director since 1992 in the letterhead of the Mahaveer Co-operative Credit Society. Although he has stated that his name was so printed on the letterhead without his knowledge, it is hard to believe it that he would be in the dark about it for such a long period. The evidence that he has tried to produce to show that he was not elected director of the

said Society, namely, the certificate from the District Deputy Registrar, only shows that he was not elected director of the Society. It does not negative his holding of office of the advisory director.

34) Similarly, the Jalgaon Municipal Council had applied to the JDCC Bank for a loan of Rs.34.26 crores, on 14.3.2001 and on the same day Shri. Jain in his capacity as the Chairman of the JDCC Bank had sanctioned it (page 37 of Shri. Jain's deposition). It was placed before the meeting of the Board of Directors subsequently. This was also done by him disregarding the note of the office against giving the loan to the Municipality. This loan was sanctioned for a period of 120 days. Before the expiry of the said period, however, it was converted into a long-term loan for 15 years (page 38 of Shri. Jain's deposition). The JDCC Bank had applied to the State Government for sanction to grant the said loan to the Municipality, and the State Government had not only refused the sanction but had directed that the amount of the loan already disbursed, should be immediately called back (page 37 of Shri. Jain's deposition). However, the JDCC Bank admittedly did not recover any amount of the loan from the Municipality. It is interesting to note that this loan was asked for by the Jalgaon Municipal Council urgently for the

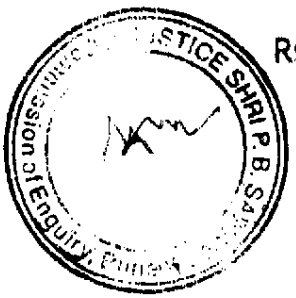
scheme of water supply, and hence Rs.30 crores out of the said amount was disbursed to the Municipality on the same day the application was made for the loan, and out of the amount of Rs.30 crores, Rs.15,64,13,738/- were paid by the Municipality to M/s. Khandesh Builders, admittedly not for any water supply scheme. He has admitted (page 40) that M/s. Khandesh Builders were not given any contract by the Municipality for water supply scheme. He has also further admitted (page 39) that it is the responsibility of the Bank to see that the loan is expended for the purpose for which it is taken from the bank. The loan given to the Municipality was also without taking any security from it. He has further admitted (page 40) that on 31.7.2004, the Municipality owed an amount of Rs.55,40,20,000/- towards the principal amount of loans taken by it and Rs.21,62,41,000/- towards interest on them.

35) As regards the OTS, Shri. Jain has admitted that he had given advance sanction to the OTS with the Sant Muktabai Shikshan Sanstha and the settlement as has been pointed out earlier, was for Rs.31,00,000/-, when the decree was for the amount of Rs.1,65,76,397/-. What is necessary to note is that on his own admission, the meeting of the Board of Directors was

fixed on the very day that he had sanctioned in advance the said settlement (page 18 of Shri. Jain's deposition).

36) It is Shri. Suresh Jain's defence that although he was individually giving such advance sanctions to the loans and settlements, informally he used to talk to some directors who were on the respective occasions, with him. There is no mention of the presence of any of the directors in the orders of sanction made by him. This is also not stated in reply to the allegations made by the applicant. He is also aware of the fact that if there is a need for an urgent sanction of loan, he could always call an emergency meeting under the bye-laws of the JDCC Bank. There could further be no urgency for one time settlement so as to require him to give his advance sanction.

37) The Jalgaon Khandesh Bhookampa Sahayata Trust admittedly received Rs.21,00,000/- as donation from the JDCC Bank on 22.2.2001, as per the resolution of the Board of Directors, dated 8.2.2001 (page 26 of Shri. Jain's deposition). It is not disputed that donation could be given only out of the profits of the bank, and that too according to the norms issued by the RBI on 16.3.1991 (exhibit 49), only to the extent of 1 per cent of the publicly declared profit, with the upper limit of Rs.10,000/-. According to Shri. Chari (pages 5 to 7 of his



deposition), who had inspected the accounts during the relevant period, the JDCC Bank was making losses at the time the donation was given. The NABARD had further treated the JDCC Bank as a weak unit since 31.3.1998. Further, if donation was to exceed Rs.10,000/-, the permission of NABARD and of the Registrar of the Co-operative Societies had to be taken for the purpose (exhibit 49). This was admittedly not done, while giving the said donation. According to Shri. Suresh Jain (page 26), at that time, the JDCC Bank was in profit. This assertion is based on his contention that the NPA norms which showed the Bank in loss, were not binding on the JDCC Bank. As indeed, according to him, as pointed out earlier, no directives issued by the NABARD or the RBI were binding on the Bank; they were only guidelines and could be disregarded as and when needed.

38) The other aspect of this contention is that according to the circular issued by the State Government on 29.1.2001 (exhibit 98), the donations for the earthquake relief could be made only to the Chief Minister's Relief Fund. This circular was also brought to the notice of the Chairman of the JDCC Bank i.e. Shri. Suresh Jain by the Deputy Registrar, Co-operative Societies, by his letter dated 3.2.2001 (exhibit 96) and he was requested to send the donation to the Chief Minister's

Relief Fund. Yet, on 8.2.2001 the Board of Directors passed a resolution that the donation should be given to Jalgaon-Khandesh Bhookampa Sahayata Nidhi. It is thereafter that on 9.2.2001, it was decided to form the Trust in question, and the trust deed was drawn up. The Trust was actually registered on 23.3.2001 (page 26 of Shri. Jain's deposition). Shri. Jain has, however, tried to defend the situation, by stating (page 26) that the Bank had applied to the Government on 27.3.2001 for permission to give the said donation to the Trust, and the correspondence on the subject was pursued till 5.8.2002. However, what was the result of this correspondence has not been told by him to the Commission. It does not appear that the Government had given any such sanction.

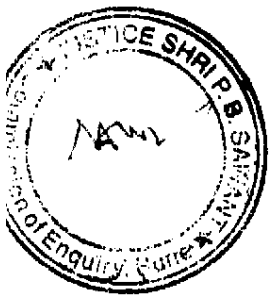
d) **Functioning of Shri. Jain as the Chairman of the JDCC Bank**

39) As pointed out earlier, Shri. Jain was managing the affairs of the JDCC Bank as if the JDCC Bank was his personal fief. He was sanctioning most of the loans by himself in advance and, these sanctions were placed before the Board of Directors even after the disbursement of the loans. He was also making the One Time Settlements on his own. He was extending the IBP facilities single handedly by even disregarding the objections of

the office, whenever he was pleased to call them. Most of the times, the transactions were being sanctioned without even calling the comments of the office. He also gave no reasons for not agreeing with the views of the Bank's office. He has admitted in his deposition that he had read the bye-laws of the JDCC Bank only cursorily. He never read the directives issued either by the NABARD or the RBI. According to him, it was not his duty to read them. They had to be read by the JDCC Bank officials, and the managing director of the JDCC Bank. He has also called the JDCC Bank's staff mediocre and without financial acumen, suggesting thereby that they had no knowledge of the financial transactions. According to him, he was taking all the decisions in the interests of the JDCC Bank and the society, of course as perceived by him. As pointed out earlier, even the RBI and NABARD circulars were not binding on the Bank, according to him.

B) **JALGAON MUNICIPAL COUNCIL**

40) Shri. Suresh Jain was the President of the Jalgaon Municipal Council (hereinafter referred to as the JMC) for the years 1985 to 1994 and thereafter, on his own admission, he was the "high command" as far as the affairs of the JMC were concerned. Except for the period 2001 to December, 2003, when



the opposition party was in power, his followers were all along in power (page 61 of Shri. Jain's deposition).

41) During this period, the JMC had undertaken the following projects:-

(i) the regularisation of the unauthorised constructions;

(ii) the project undertaken by M/s. Golani Brothers;

(iii) the Gharkul Yojana or Housing Scheme;

(iv) the Jalgaon Airport;

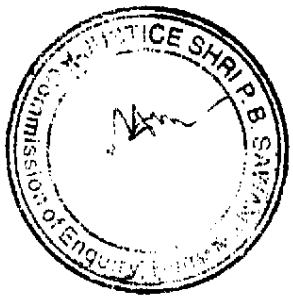
(v) the Waghur Water Supply Scheme;

(vi) the construction of commercial complexes.

During this period the JMC had also taken loans from the JDCC Bank.

a) **Regularisation of the unauthorised constructions**

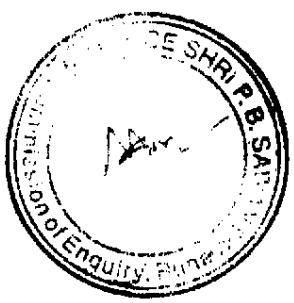
42) As regards the regularisation of the unauthorised constructions, the applicant has not placed any material before the Commission beyond a list of the constructions regularised by imposing fine. Whether the constructions were made in contravention of law or rules, whether they could or could not be regularised under the D.C. Rules and the bye-laws framed by the JMC, and what was the nature and extent of the irregularity



in the constructions, has not been explained. Hence, it is not possible to express any opinion on the said allegation.

b) **The project undertaken by M/s. Golani Brothers.**

43) The JMC had in 1988 entered into a contract with M/s. Golani Brothers for construction of a market complex. According to this contract, M/s. Golani Brothers were to develop a plot belonging to the Municipal Council, admeasuring 5 Acres and 32 Gunthas. In the complex, M/s. Golani Brothers were to construct a 17 storied building free of charge and hand it over to the Municipal Council alongwith Rs.51,551/- (page 40 of Shri. Jain's deposition). The second part of the contract was that M/s. Golani Brothers were to construct a five storied building in the remaining land, and to give on rent the premises therein to the third parties, by charging premium and nominal rent. The premium was to be appropriated by M/s. Golani Brothers, and the rent was to accrue to the Municipal Council. The entire project, namely, the 17 storied building as well as the 5 storied building was to be completed within 24 months of the work order, failing which M/s. Golani Brothers were liable to pay Rs.25,000/- per day of the delay. The project was not completed within time. Shri. Jain in terms admitted (page 69) that the delay started during his tenure as the President of the



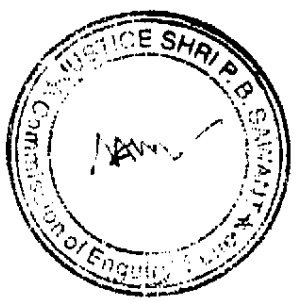
JMC. In fact, it was completed only after about 12 years. M/s. Golani Brothers did not pay nor did the JMC recover from them, any penalty for the delay. Instead, on 30.4.1993, the Municipal Council passed a resolution to purchase 206 tenements/units in the 5 storied building to be constructed by the contractors at the total price of Rs.4,09,34,983/-. This resolution for the purchase of the tenements by the Municipality was challenged by witness Shri. Narendra Patil (witness No.21) and one Shri. Khadke, before the Collector. The Collector stayed and suspended the resolution. The order of the Collector was challenged by the JMC before the Divisional Commissioner, who confirmed the decision of the Collector. Against the same, the JMC took the matter to the Minister for Urban Development in revision, and the Minister while setting aside the orders of the Collector and the Divisional Commissioner, strangely enough appointed Shri. Suresh Jain as the sole arbitrator for determining the alleged loss sustained by the contractor because of the orders of the Collector and the Divisional Commissioner. This order of the Minister was challenged by witness Shri. Patil and Shri. Khadke before the High Court (Aurangabad Bench), which challenge was rejected by the High Court. Against the decision of the High Court, Sarvashri Patil

and Khadke approached the Supreme Court. The Supreme Court set aside the order of the High Court and remanded the matter to the High Court for reconsideration. The matter is still pending there. In the meanwhile, Shri. Jain passed his arbitration award granting more than Rs.2.50 crores as compensation to M/s. Golani Brothers, and the JMC paid the said amount to the contractor. It may be pointed out here that there was never any stay granted either by the Collector, the Divisional Commissioner, the High Court or the Supreme Court to the construction after the work order was issued by the Municipality on 27.10.1988. Therefore, the contractor, M/s. Golani Brothers were liable to pay to the Municipality the penalty at the rate of Rs.25,000/- per day from the expiry of the period of 2 years from the date of the work order issued to them. Not only no amount was recovered or even demanded from the contractor by way of penalty, instead, as pointed out above, Shri. Jain granted them the compensation of Rs.2.50 crores for the alleged loss incurred by them. What kind of loss the contractor had incurred, is not made clear. The contractors, thus, derived benefit of Rs.4,09,34,983/- being the premium received by them from the JMC towards the acquisition by the Municipality of 206 tenements/units from it plus Rs.2.50 crores

received from the JMC for the so-called loss suffered by them. This gain by the contractors was in addition to what they had gained by way of the non-payment of the property-tax during the delayed period of the construction and the non-payment of the penalty at the rate of Rs.25,000/- per day for the delay in the construction.

44) The opponent, Shri. Suresh Jain, was, admittedly, in the JMC as its President from 1985 to 1994. However, he has claimed that the affairs of the JMC were being conducted under his guidance even thereafter. He had formed the Shahar Vikas Aghadi (the City Development Front) and the elections to the JMC were contested by him and his group on the platform of this Aghadi. He was the leader of this Aghadi till 1994. He was also the guide of the Aghadi from 1995 to 2001, and during this period, the Municipal affairs were being conducted under his guidance (page 41 of Shri. Jain's deposition). He has also stated (page 40) that the financial affairs of the JMC in particular are conducted under his guidance, of course, he has added that, if his advice is sought. He has also stated (page 61) that the JMC has a majority of the members belonging to his Aghadi. He has further claimed that he has helped the JMC to secure loans. This is in addition to what he has stated on page 61, paragraph 71,

namely, that since he is the "High Command", it can be said that the JMC had undertaken the construction of the airport under his guidance. It may be mentioned in this connection that the applicant, Shri. Hajare, has annexed to his allegations, two documents. One is an agreement, dated 29.5.1999, between the JMC and one Resource EET (Cyprus) Ltd. for consultancy services, as per the JMC resolution No.81, dated 22.5.1999 (page 504 of the Charter of Allegations). In this agreement, Shri. Suresh Jain is named as the sole arbitrator for resolving disputes, if any, between the parties to the agreement. The second document is a public notice punished in Daily Lokmat, dated 21.1.2001 by Shri. Laxmikant Chaudhary, the then president of the JMC (page 509 of the Charter of Allegations). By this notice, all the contractors of the JMC were invited to forward their claims to the JMC for the amounts due from the latter to the said contractors. The notice has a footnote which states that from 1.2.2001 onwards, all the financial affairs of the JMC would be carried on under the guidance of Shri. Suresh Jain. Thus, what was being done, till that day, in fact, was publicly acclaimed for the guidance of the members of the public. It is in the light of these declarations and the documents, that we have to judge the allegations made against



the opponent with regard to the arbitrary handling of the Municipal affairs by him as his private domain. These activities would cover the construction of the airport, the undertaking of the Housing Schemes (Gharkul Yojana) and the floating of the scheme for water supply, in respect of which specifically, the allegations are made before us by the applicant.

c) **Gharkul Yojana (Housing Scheme)**

45) The object of the Gharkul Yojana, which was started in 1999, was to rehabilitate the slum dwellers. As is stated in Shri. Joshi's report (exhibit 103), the housing projects were to be constructed at nine different sites and in all 11424 tenements were to be constructed. The total cost of the project was estimated at about Rs.110.79 crores. Out of the said amount, Rs.79.04 crores were to be taken as loan from the HUDCO at the interest rate of 16 per cent per annum with additional 4 per cent interest being paid to the Government as the guarantee fee. Rs.31.75 crores were to be raised by the JMC from its own revenues. The architect's fees for this project was fixed at 3 per cent of the estimated costs, and the private architects were appointed for the purpose (pages 2, 11 and 50 of the report exhibit 103). Out of the nine sites, the site at Shivajinagar and one plot at Meharun-Shivar were alone in the

possession of the JMC at the time of acceptance of the tender and the issuance of the work order. The remaining sites and the remaining plots at Meharun-Shivar site were in not in possession of the JMC. Out of these sites, four sites belonged to the Government, which were yet to be acquired from the Government and two sites, which belonged to the private owners, were also not acquired till then. The one site which was acquired, was involved in litigation. Again, none of the building plans for construction on these eight sites were sanctioned. They were not sanctioned obviously because the said sites were not in possession of the JMC. The plans of construction on the land at Shivajinagar site and on one plot at Mehrun-Shivar was also not sanctioned, since the proposal for the change of user of the said land and the said plots was pending before the State Government under section 37 of the Maharashtra Regional Town Planning Act.

46) The JMC had sanctioned the entire Gharkul Yojana on the nine sites by one resolution. There was also one administrative order for issuing all the tenders. However, the tenders were split into two sets of 6 and 3 respectively and published on two different dates in the issues of the daily newspapers Indian Express and Lokmat. The Assistant Engineer

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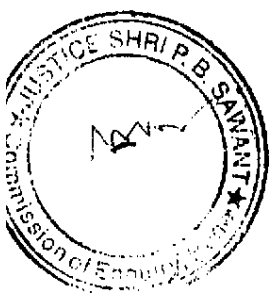
dated 2.10.1993, the JMC could not accept tenders which were above 10 per cent of the estimated costs. The Chief Officer also recommended inviting fresh tenders. However, his note was overruled by the General Body of the JMC and the tenders of M/s. Khandesh Builders were accepted. At that time also, Shahar Vikas Aghadi of Shri. Suresh Jain was in power in the JMC (page 3 of Shri. Bhole's deposition).

47) It may be noted in this connection that M/s. Khandesh Builders had not only given the tenders for higher cost than the estimated one, but had also annexed a letter (exhibit 146) alongwith their tenders, which had suggested modification in the tender terms. It appears that most of the modified terms were accepted by the JMC. The municipal office had submitted its note on the suggested modifications by M/s. Khandesh Builders, and had opined against the proposed modifications and suggested inviting fresh tenders (pages 589 to 591 of the Charter of Allegations). However, overruling these objections, the JMC accepted the tenders of M/s. Khanedesh Builders, vide its resolution dated 24.4.1999 (pages 586 to 588 of the Charter of Allegations). These modified conditions as accepted by the JMC, included an additional item of work, namely, piling. Admittedly, there was no need for piling, except at Pimprala site. However,

the original notice inviting the tenders had not included Pimprala as one of the sites for the housing projects. The site at Pimprala was substituted later for the original five sites, namely, the sites at Samtanagar, Hari Vitthal Nagar, Khanderao Nagar, Asoda Road and Khedi, after acceptance of the tenders. It is interesting to note that M/s. Khandesh Builders had suggested the additional item of piling in the said letter annexed to the original tender, although at that time the sites suggested did not require piling. The piling, as pointed out above, was needed only at Pimprala. It, therefore, appears that M/s. Khandesh Builders knew from the beginning that some original sites would be substituted by a site like Pimparala, where the piling would be necessary. Otherwise, it is difficult to appreciate as to how M/s. Khandesh Builders came to suggest the additional item of piling. This shows that M/s. Khandesh Builders had some inside information, or information from an "insider".

48) It is necessary to note here that the modifications in the terms and conditions granted to M/s. Khandesh Builders included, firstly, the condition that an advance to the extent of 15 per cent of the costs was to be paid to M/s. Khandesh Builders as a mobilisation advance without interest. The said

advance was to be paid within 15 days of the issuance of the work order. The Municipal resolution stated that the work order was to be issued forthwith. This meant that the mobilisation advance was to be paid to M/s. Khandesh Builders within 15 days of the issuance of the work order, although one of the terms mentioned by M/s. Khandesh Builders was that the work itself would commence only after all the sites were given in their possession. Admittedly, only one site and a part of another site out of the nine sites, as stated above were in possession of the Municipality at that time. The work order was issued on 29.4.1999 and on that day no site was available to be handed over to the contractor. For the first time, the land at Pimprala came in possession of the JMC on 8.5.1999, and the land was handed over to the contractor after levelling, only on 19.10.1999. The mobilisation advance of Rs.11.83 crores was, however, given to the contractors on 3.5.1999 (page 7 of Shri. Bhole's deposition). The entire Gharkul Yojana was to be implemented also by the funds received from the HUDCO as loan with interest. Shri. Suresh Jain, admittedly, was the Minister for Housing, when the loan was taken from the HUDCO for the said scheme. The contractor was given extension for construction from time to time, and lastly upto 31.5.2004 (page 8 of Shri.



Bhole's deposition). The project is still not complete, although according to the terms approved earlier, the project was to be completed within 9 months from the delivery of the sites, to the contractor.

49) No fresh tenders were invited after the sites were changed or after the terms were modified. Not only the sites were modified, but the terms of the tenders were also modified. According to Shri. Bhole, the schemes like Gharkul Yojana require technical approval from the Maharashtra Jeevan Pradihikaran, which was admittedly not taken.

50) We may further point out that there is a free bus service provided by the JMC for the residents of Pimprala Housing Colony for conveying them from and to the city. The contract for providing the service has been given to one Shri. Pradeep Raisoni, who, it is claimed, belongs to the Shahar Vikas Agahdi of Shri. Suresh Jain. He was also the President of the JMC after Shri. Jain ceased to be its President. He was further the chairman of the high power committee appointed by the JMC to control the affairs of the JMC, and without its permission no major work was to be undertaken by it. The total amount spent by the JMC for the bus service as reported in Shri. Joshi's

report was Rs.3,19,32,004/- for the period 1999 to 2003 (pages 46 and 47 of exhibit 103)

d) **Jalgaon Airport**

51) According to the facts which have come on record, the JMC had applied to the Government for transfer of its (Government's) airstrip, which was outside the Jalgaon City to itself, for extension, development and upgrading. Alongwith the said application, it had also applied for transfer of 150 acres of land surrounding the airstrip. It appears that the State Government by its resolution dated 4.11.1997, transferred the airstrip and the land to the JMC at nominal cost. The project, according to Shri. Jain (page 61), involved the cost of about Rs.100 crores over a period of 15 years. Admittedly, for the extension, development and up-gradation of the airport, the permission of the Director General of Civil Aviation was necessary. However, till date the permission from that authority has not been obtained. In order to elicit information from the concerned authorities with regard to the permission, if any, for civil aviation of the airport undertaken to be constructed by the JMC, notices under section 8B of the Commission of Inquiry Act were issued to the Government of Maharashtra and JMC and letters were written to the Director General of Civil Aviation

and the Airport Authority of India. They confirmed that no permission is granted by the DGCA for the said airport project by the JMC. The JMC, however, went ahead with the project without waiting for the said permission, and paid to the contractors and the consultants more than about Rs.6 crores. Out of that amount, Rs.3.18 crores is lying with the contractor as mobilisation advance without interest.

52) This shows that there was a total lack of the application of mind and a callous regard for the funds of the JMC. In this connection, it is necessary to note firstly, that the civil aviation is not a subject, which falls under the discretionary or obligatory duties of a Municipality under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act. Secondly, as admitted by Shri. Jain himself (page 62), hardly any work is done for providing the drainage facilities for Jalgaon, by the JMC, though it is one of its obligatory duties. If the entire Jalgaon city is to be provided with the drainage facility, as stated by Shri. Jain (page 62), it will not require more than Rs.100 to 150 crores. The Jalgaon city as is widely known is in urgent need of the drainage facility since all the gutters there are open and the city is exposed to unhygienic conditions. However, the JMC under the guidance of

Shri. Jain, it appears, have had no time so far to bestow on providing the said facility. Instead, it has gone in for the grandiose scheme of the airport, which as stated above, will cost about Rs.150 crores. Shri. Jain's defence (page 62) for undertaking the airport project is that it would lead to industrialisation, which, in turn, will increase the prosperity of the town. It has to be remembered in this connection that at a distance of about 125 kilometres (by road) from Jalgaon, a full-fledged airport is situated at Aurangabad, which is also a tourist centre. That airport is available for the traffic of both the goods and the passengers for the surrounding areas, which includes Jalgaon. In any case, if a priority is to be given, it has to be for providing the drainage facilities to the Jalgaon town. Even for industrialisation, that basic infrastructure is very much necessary. The airport scheme, in the circumstances, was more of a showpiece than an urgent need. As pointed out earlier, the construction of the airport could not have started without the permission of the Director General of Civil Aviation, which is not yet given. The amount of more than Rs.6 crores spent by the JMC, would thus appear to have gone waste, since 1999 onwards. This is in the face of the heavy debts in which the JMC is mired for the last several years. Out of that amount, Rs.3.18

crores are lying with the contractors M/s. Atlanta Infrastructures as advance without earning any interest. It is also strange how the State Government, in the face of the above facts, could hand over the airstrip and the land to the JMC for the purposes of extending, developing and upgrading it as the airport.

e) <u>Waghur Water Supply Scheme</u>

53) It appears that Maharashtra Pani Puravatha & Jalnissaran Mandal, had in the year 1992 conceived the scheme to supply water to the Jalgaon City from the Waghur dam. However, subsequently the scheme was handed over to the JMC. Thereafter on 24.4.1999, the JMC resolved to implement the scheme as sanctioned by the Government vide the Government Resolution dated 5.11.1998. The estimated cost was Rs.159.45 crores, out of which Rs.47.55 crores were meant for increasing the height of the dam wall. The work was to be completed within 30 months from 24.4.1999. The scheme was to be financed by taking a loan of Rs.72.65 crores from the HUDCO and by the Government grants of Rs.86.80 crores (pages 51 to 53 of exhibit 103). Out of the loan amount, an amount of Rs.40,85,40,000/- was received between 1999 and 2000 (page 2 of Shri. Borole's deposition). However, the evidence shows that

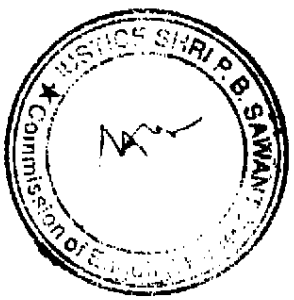
the dam itself was not complete at the time the loan was taken and the work was started. It is not complete even today (pages 2 and 3 of Shri. Borole's deposition). It is elementary that unless the dam is complete, no water supply scheme can be implemented. However, the loan was taken in 1999 from the HUDCO with interest at the rate of 13.75 per cent per annum, and as on 31.3.2003 the burden of the unpaid interest alone came to Rs.18,17,57,659/- (exhibit 148). The JMC has thus to bear the burden of the interest for the said loan without any yield from the scheme. It is not known even today when the dam will be completed to facilitate the supply of water to the Jalgaon City. As pointed out by Shri. Joshi in his report (exhibit 103), even with the help of the loan taken from the HUDCO and the grant received from the Government, not more than 20 per cent of the scheme had been completed. Shri. Borole, Deputy Engineer of the Municipality (witness No.20), when confronted with the question as to what purpose the premature expenditure of the amount had served and was going to serve when the dam itself was not complete, could not give any answer (page 3 of Shri. Borole's deposition).

54) It may also be noted that the contractor engaged for laying the pipeline is one Shri. M.K. Kotecha of Tapi Pre

Stress Company. He was one of the trustees of the Jalgaon-Khandesh Bhookampa Sahayata Trust. He was paid mobilisation advance of Rs.22.64 crores in 1999 itself (pages 1 and 2 of Shri. Borole's deposition). He received further advances thereafter. Shri. Kotecha, as the accounts show, in all received advances of Rs.33,53,61,762/-. Out of that amount, work worth Rs.21,63,73,595/- was done by him while the amount of Rs.11,89,88,167/- remains in his hand as unspent and without interest (exhibit 148).

55) One more aspect of this scheme was that although, on the admission of Shri. Borole himself (page 1), an amount of Rs.38 to 39 crores was spent on the pipeline scheme, as per the statement of accounts filed by the accountant of the municipality, only Rs.33,53,61,762/- were advanced (exhibit 148). For the scheme, loan was taken from the HUDCO to the tune of Rs.40,85,40,000/- at the interest rate of 13.75 per cent per annum, Rs.1,00,00,000/- were received as the grant from government and a loan of Rs.34.26 crores was taken from the JDCC Bank in 2001, at the rate of 16 per cent per annum. Interestingly, out of the amount of loan taken from the JDCC Bank, Rs.15,64,13,738/- were paid to M/s. Khandesh Builders for a purpose not connected with the water supply scheme

(page 40 of Shri. Jain's deposition). It appears that this amount was paid to them towards financing some other schemes of the JMC. In all, the JMC has thus to pay interest on the amount of Rs.40,85,40,000/- at the rate of 13.75 per cent per annum and on Rs.34.26 crores to the JDCC Bank at the rate of 16 per cent per annum. It is also admitted (page 7 of Shri. Borole's deposition) that no permission was taken from the Forest Department, from the National Highway Department and the State Highway Department for laying the pipeline through their land when the work started, and no permission is yet received from the Forest Department. The permissions from the National Highway Department and the State Highway Department were received only in 2004. Shri. Borole has admitted (page 7) that no more than one year's period is required for laying the pipeline, and the JMC knew in advance the obstructions they might have to encounter while laying the pipeline. Yet, no advance preparation was made to get over the said obstruction and to complete the work without hindrance once it was started. If again, laying the pipeline required not more than one year, there was no need to take the loan in 1999 from the HUDCO and again in 2001 from the JDCC Bank, and burden the Municipality with the load of interest. As Shri. Joshi has pointed out in his



report (exhibit 103), the work which is left half done is bound to affect adversely the quality of the pipeline, which is already led.

f) <u>The construction of Commercial Complexes</u>

56) There appear some irregularities/illegalities in the construction of the commercial complexes constructed by the JMC in the year 2000-2001. These complexes were, Veer Savarkar Commercial Complex, Sane Guruji Commercial Complex, Swami Vivekanand Commercial Complex (also known as Khwaja Miya Complex) and the Sagar Park Complex. The first complex was proposed on the property reserved for parking of the vehicles. The second was proposed on the land, which was reserved, for a hospital. The third was proposed on a slum area and the fourth was proposed on the land reserved for civic centre. The Municipality appointed Shri. Hafeez Contractor of Bombay as an architect for preparing plans of all the four complexes. Shri. Contractor raised a bill of Rs.90,00,000/-, and out of that the Municipality has paid him about Rs.9,00,000/- till date (pages 4 to 6 of Shri. Borole's deposition).

57) Subsequently, these projects for all the four complexes were scrapped by the resolution of the JMC dated 23.9.2002 (page 6 of Shri. Borole's deposition). However, while

the projects were in process, by an advertisement given in the newspaper tenders for the construction of the complexes were called. Only two tenders were received i.e. from M/s. Khandesh Builders and the M/s.Unity. In all the four cases, M/s. Khandesh Builders' tenders were accepted. It is interesting to note that both, M/s. Khandesh Builders and M/s. Unity had the same postal address and the telephone numbers. M/s. Khandesh Builders had placed certain conditions, one of which was that, in case of any dispute, Shri. Suresh Jain will be the arbitrator (pages 4 to 6 of Shri. Borole's deposition).

58) The projected costs of this scheme was as follows (pages 4 to 6 of Shri. Borole's deposition):-

(1)	Veer Savarkar Complex	Rs.5.63 crores.
(2)	Sane Guruji Complex	Rs.7.50 crores.
(3)	Swami Vivekanand Complex	Rs.13.28 crores.
(4)	Sagar Park Complex	Rs.12.31 crores.

59) It was only M/s. Khandesh Builders' tenders which were accepted in all the four cases as stated above.

60) This also shows again a special relationship between Shri. Suresh Jain, who claimed to be the guide of the ruling party in the JMC, and M/s. Khandesh Buidlers.

g) <u>Loans raised by the JMC from the JDCC Bank</u>

61) The JMC had taken loans from the JDCC Bank by mortgaging its property on two occasions, namely, Rs.15 crores in 1997 and Rs.34.26 crores in 2001. However, the JMC did not take permission of the State Government for mortgaging its property as is required by the provisions of section 92(1) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. This act was therefore patently illegal on the part of the JMC.

C) **JALGAON-KHANDESH BHOOKAMPA SAHAYATA NIDHI (TRUST)**

62) There was an earthquake in the Kutch area of Gujarat on 26.1.2001. According to the evidence which has come on record, the decision to establish the Jalgaon-Khandesh Bhookampa Sahayata Nidhi (Trust) was taken in an informal meeting of the citizens of Jalgaon, organised at Shri. Jain's initiative on 9.2.2001. Shri. Jain has deposed (page 6) that the meeting was attended by about 200 people, but some prominent persons alone signed the minutes of the meeting. The minutes (exhibit 115) show that only 8 persons have signed them. In that meeting, a Committee of the Trustees was formed with Shri. Suresh Jain as the Chairman and one Shri. Ishwar Jain as the Vice-Chairman. It is also recorded that Shri. Ishwar Jain moved

the resolution to establish the Trust. However, the minutes nowhere bear his signature, in token of his attendance. The trust-deed on record (part of exhibit 114) shows that it was prepared on a stamp paper on the same day, and signed by the trustees on the same day. The deed also bears the signature of Shri. Ishwar Jain, among others. The name of Shri. Ratanlal C. Bafna though not mentioned in the trust deed as one of the trustees, seems to have been registered in the records of the Charity Commissioner as one of the trustees of the Trust. In the very same meeting, it was decided, as the minutes of the meeting show, that the money collected by the Trust would be handed over to the Bharatiya Jain Sanghatana (hereinafter referred to as the BJS), another trust, for building schools in the area affected by the earthquake.

63) The Trust was registered with the Charity Commissioner under the Bombay Public Trusts Act, 1950, on 23.3.2001. It was registered with the Income-Tax Commissioner, Nasik, under the Income Tax Act for the purpose of Section 80G of that Act, on 27.3.2001 (exhibit 113). The said provision of the Income Tax Act casts an obligation on those who collect donations for the trust, to maintain full details of the donor who gives donation of Rs.5,000/- and above. The said provision also

requires that complete accounts of the donations, so collected, have to be maintained.

64) The donations were collected by the Trust in cash as well as by cheque. There is, however, a discrepancy in the amounts collected by the Trust as declared by Shri. Suresh Jain in a public meeting, and the amounts shown in the account books of the Trust. There is also a discrepancy in the amounts paid to BJS as mentioned in the minutes of the meetings dated 10.04.2001 and 14.8.2001 and that shown in the accounts. The discrepancy is exactly of Rs.51,00,000/-. According to the written reply filed by Shri. Jain before the Commission, he had donated Rs.51,00,000/- to the Trust. However, in his deposition before the Commission he stated that the amount so mentioned in the reply was wrong and he had donated no amounts whatsoever. The only contribution which he had made to the Trust was Rs.5,000/- towards the corpus of the Trust. According to the minutes of the meetings of 10.4.2001 and 14.8.2001, the total amount remitted by the Trust to the BJS during the periods upto 31.3.2001 and 1.4.2001 to 31.7.2001, together was Rs.2,28,79,268.83 whereas the accounts show that during the said period, the amount so paid was Rs.1,77,79,268.83. The difference is exactly of Rs.51,00,000/-, which Shri. Jain has

claimed in his reply before the Commission, as a donation given by him to the Trust. Shri. Jain has not explained this discrepancy. When he was asked as to how he stated that he had donated Rs.51,00,000/- in the reply filed before the Commission in October, 2003, the only explanation he gave was that it was done by mistake (page 13). It is difficult to believe that a politician of his standing and a senior minister in the cabinet of the State Government would make such mistake with respect to the huge amount of Rs.51,00,000/-.

65) The evidence further shows that there were irregularities in the maintenance of the accounts of the Trust. It has come on record that the amounts credited in the books of account of the Trust as shown in the cashbook upto December, 2001, were reflected in the minutes of the meeting held on 14.8.2001 to the last paisa. When Shri. Jain was confronted with this situation, he claimed ignorance about it, and further admitted that it means that the accounts were written later. This admission contradicts his earlier assertion that the accounts of the Trust were written every day. (Page 14).

66) Though, the Trust was resolved to be dissolved in the meeting held on 29.9.2001, it is not yet dissolved. In fact, after the meeting of 29.9.2001, an amount of Rs.6,00,000/- was

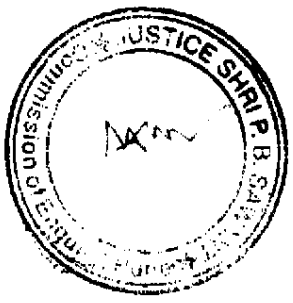
collected as donation (Page 10). There is thus patent maladministration of the Trust. It is further necessary to note here that an amount of Rs.8,00,000/- given by one Shri. Mohammed Shafi was kept by the Trust as a deposit with it as stated by Shri. Jain (page 10), though it was without interest. This amount was returned to Shafi in two instalments of Rs.6,00,000/- and Rs.2,00,00/- on 10.9.2001 and 11.9.2001, respectively. He has admitted that in the books of accounts, the amount of Rs.8,00,000/- given by Shri. Shafi was not shown as deposit on 19.5.2001 when it was received from him. In fact, the nature of the amount was not mentioned there at all. However, Shri. Deshpande, the auditor of the Trust, has stated in his deposition (page 12) that the amount was received as donation. Shri. Jain has admitted (page 11) that the Trust had ample funds, when, according to him, the deposit of Rs.8,00,000/- was accepted from Shri. Shafi. The auditor, Shri. Deshpande, however, could not explain as to how the said amount of Rs.8,00,000/- received from Shri. Shafi came to be returned to him.

67) As pointed out earlier, Shri. Jain has stated that the said amount of Rs.8,00,000/- was received from Shri. Shafi by way of interest-free deposit. Shri. Jain has not examined Shri.

Shafi nor did he file the two affidavits, which he had brought from Shri. Shafi to explain the nature of the said transaction of Rs.8,00,000/-, although the fact that he had these affidavits with him from Shri. Shafi, has been admitted by him in his deposition (page 12). Thus, there is an atmosphere of mystery surrounding both the receipt of the amount as well as its return. it has to be noted that the amount was received from and paid to Shri. Shafi by cheque.

68) The evidence which has come on record also shows that there was no register kept of the number of receipts from the receipt-books utilised for the collection of donations, nor is there any record to show the total amount of donations collected, other than what is shown in the books of accounts of the trust. There is also no record of the details of the expenses made by the BJS out of the amount received as donation from this trust, nor to show how much actually was spent from the amount received from this trust on the construction of the buildings. This was necessary firstly, because according to Shri. Jain, the construction of the schools was a joint venture of this trust as well as of the BJS. Secondly, Shri. Jain was not a stranger to the BJS, since he has been their trustee almost since its inception. Thirdly, the account of all the monies collected by

a public trust has to be maintained for the benefit of the people, who have given donations big or small, and in the absence of the record of such expenses, it is not possible to ascertain the exact purpose for which the amounts collected from the people were expended and how much of them. A strict responsibility lies in that behalf particularly on the persons who collect funds from the people in their capacity as the men from public life, and also, as in the present case, as the elected representatives of the people. The people give donations, most of the time because someone in public life is associated with the project. Further, it has to be noted that in the present case, even according to the Government instructions contained in the Government Circular (exhibit 98), the monies collected were to be handed over to the Chief Minister's Relief Fund. Assuming that this circular was not binding on the trust established by Shri. Jain, as a man in public life and as an elected representative of the people, he was bound to be transparent in all the affairs connected with the trust right from the collection of the amounts to their expenditure to the last paisa. To the extent he has failed to do it, he invites the charge of the maladministration of the trust. It has further to be noted that the trust had not sent the budget for both the years, namely,



31.3.2001 and 31.3.2002 to the Charity Commissioner (page 14 of Shri. Jain's deposition). The audited accounts of both these years were also not sent to the Charity Commissioner in time (page 14 of Shri. Jain's deposition). And, although, according to Shri. Jain, the trust was dissolved on 29.9.2001 itself, it has not been legally dissolved and for purposes of law and accountability, the trust continues to exist till date.

CONCLUSIONS:-

JDCC BANK:-

(i) Shri. Jain was intimately connected with M/s. Khandesh Builders and M/s. Krishi Dhan Cattle Feed Pvt. Ltd. They had substantial financial transactions between themselves. They were almost his fronts and, therefore, the favours done to these companies through the JDCC Bank and/or the JMC were virtually favours done by Shri.Jain to himself.

(ii) The IBP facility started by the JDCC Bank under the leadership of Shri.Jain was confined only to four companies, namely, M/s. Khandesh Builders, M/s. Krishi Dhan Cattle Feed Pvt.Ltd, M/s. ECP Housing and M/s. Jain Irrigation, and three individuals, namely, Shri. Mansukhlal Jain, Smt. Lelelavati Mansukhlal Jain and Shri. P.C. Patil. No publicity was given of

the said facility obviously with a view to make available the said facility only to the said companies and the said individuals. This amounted to a corrupt practice.

(iii) Out of the aforesaid four companies, M/s. Khandesh Builders and M/s. Krishi Dhan Cattle Feed Pvt.Ltd. cornered major portion of the funds of the JDCC Bank under the said facility.

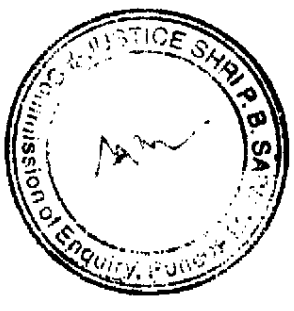
(iv) The rules for the IBP facilities, which were made by the JDCC Bank, were not got approved from the Registrar of the Co-operative Societies as was required under bye-law No.3(16) of the JDCC Bank's bye-laws. There was thus violation of the mandatory provisions of the said bye-law and, therefore, the JDCC Bank was operating the IBP facility without there being valid rules for the said operation. This was against the law.

(v) It has also come on record that the JDCC Bank had extended the IBP facilities to M/s. Khandesh Builders even before framing the rules, which was again contrary to bye-law 3(16) itself. This is apart from the fact that the rules themselves when they were made, were not got approved from the Registrar of the Co-operative Societies, as stated above. This was again a patently illegal action on the part of the JDCC Bank and also amounted to a corrupt act.

(vi) The very fact that the Board of Directors gave Shri.Jain the powers to grant the IBP facilities above Rs.2 crores, while reserving to itself the powers to grant the facilities only upto Rs.2 crores, shows that Shri. Jain was dominating the affairs of the JDCC Bank, and the Board of Directors was merely dittoing whatever decisions he was taking unilaterally. Thus, there was a one-man rule in the management of the JDCC Bank and, therefore, Shri. Jain alone will have to be held responsible for all the acts of omissions and commissions on the part of the JDCC Bank, which ultimately led to the supersession of its Board of Directors and the appointment of the Administrator under the provisions of the Maharashtra Co-operative Societies Act.

(vii) The IBP facilities were given to M/s.Khandesh Builders and M/s. Krishi Dhan Cattle Feed Pvt.Ltd. without taking adequate security as laid down by the rules framed by the Board of Directors. This was illegal and also amounted to a corrupt practice.

(viii) Shri.P.C. Patil, a director of the JDCC Bank, was granted the IBP facility against the cheques drawn by him on another branch of the JDCC Bank, which was prohibited by the

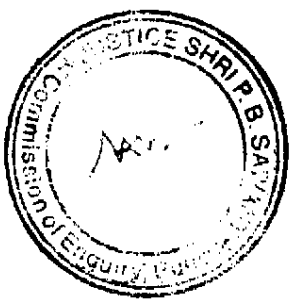


rules framed by the Board of Directors. This was illegal and also amounted to a corrupt practice.

(ix) The cheques presented by M/s.Khandesh Builders and against which they had obtained the IBP facilities, were on three occasions dishonoured. Yet contrary to the rules of the JDCC Bank, M/s.Khandesh Builders were not blacklisted, which was incumbent upon the JDCC Bank to do when their cheque was dishonoured on the first occasion itself. On the other hand, M/s. Khandesh Builders were given enhanced IBP facilities after the dishonour of their three cheques and the facility given to them was increased upto Rs.30 crores, much beyond the value of the security which they had offered. This was illegal and also amounted to a corrupt act.

(x) The other interesting feature of the IBP facility extended by the JDCC Bank was that it had done so although there were no surplus funds available with the JDCC Bank, and the JDCC Bank was, in fact, taking overdraft facilities from the Maharashtra State Co-operative Bank. This was against the policy/rules made by the JDCC Bank and was illegal.

(xi) Smt.Leelavati M. Jain, the wife of a director of the JDCC Bank, Shri.Mansukhlal Jain, was given the IBP facility against her own cheque drawn in the name of M/s. Suraj



Enterprises, of which she was the proprietor. This was illegal and amounted to a corrupt act.

(xii) M/s. Khandesh Builders and M/s. Krishi Dhan Cattle Feed Pvt. Ltd. were sanctioned loans, and they were disbursed to them in advance of the sanction of the loans by the Board of Directors of the Bank, from time to time. These acts were both illegal and corrupt.

(xiii) Shri. Jain had on his own, before getting the sanction of the Board of Directors of the Bank, concluded the One time Settlements with Sant Muktabai Shikshan Prasarak Sanstha and M/s. J.T.Mahajan Soot Girani. These settlements were in defiance of the RBI and the NABARD directions as also the JDCC Bank's own policy/rules, in as much as the settlements were also with regard to the principal amounts of loan. The principal amounts of loan in these settlements were reduced on a massive scale. These acts were both illegal and corrupt.

(xiv) As Shri. Jain has admitted, such settlements were done with about 400 to 500 parties, much to the detriment of the Bank's interests. These settlements were both illegal and amounted to corrupt practices.

(xv) Some of these settlements were made even beyond the date fixed for such settlements by the RBI and the NABARD, which was illegal and also amounted to corrupt practices.

(xvi) The settlement with Sant Muktabai Shikshan Sanstha was made even when there was a Court decree against that institution, and even when that institution had enough assets to pay the entire decretal amount. The defence taken by Shri.Jain, who alone was responsible for the said settlement, is that he had no knowledge that that institution had given such security, although the security was mentioned by that institution in their letter supporting the application for loan. This was illegal and amounted to a corrupt practice.

(xvii) Shri. Jain had given advance sanctions to the loans, and had also disbursed them so far as the loans given to M/s.Khandesh Builders, M/s. Krishi Dhan Cattle Feed Pvt.Ltd., M/s. ECP Housing and M/s. Jain Irrigation were concerned. The loans were sanctioned and disbursed even without calling office-notes from the Bank. He had also given advance sanction to the loan and also disbursed them in advance of the sanction of the Board of Directors as far as the loans given to the Mahaveer Co-operative Credit Society and the JMC were concerned. The loans were so sanctioned even contrary to the notes put up by the

office and without giving any reasons for overruling the office view. These acts were illegal and amounted to corrupt practices.

(xviii) The loan advanced to the Mahaveer Co-operative Credit Society was also against the resolution of the Board of Directors, not to advance any loans to such societies. This was also illegal and amounted to a corrupt practice.

(xix) The interest taken by Shri.Jain in the Mahaveer Co-operative Credit Society, appears to be on account of the fact that he was associated with the said society, as its advisor. To grant loans contrary to the resolution of the Board of Directors and also contrary to the office notes, to a society in which Shri.Jain was interested, was illegal and also amounted to a corrupt practice.

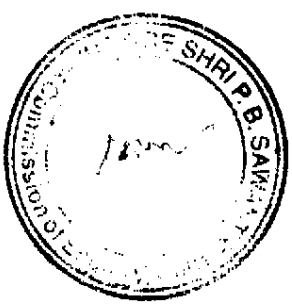
(xx) Shri.Jain had given advance sanction to the loan of Rs.34.26 crores to the JMC and had also disbursed it on the same day to the extent of Rs.30 crores, even before placing it before the Board of Directors for their sacntion and also disregarding the views of the office. This loan was admittedly sanctioned for the water supply scheme of the JMC, urgently. However, an amount of Rs.15,64,13,738/- out of the said loan was given by the JMC to M/s. Khandesh Builders, which company

had nothing to do with any water scheme undertaken by the JMC. It is thus obvious that the loan was sanctioned urgently for the benefit of M/s.Khandesh Builders, in which Shri.Jain was intimately interested. This amounted to a corrupt practice.

(xxi) Although the JDCC Bank was in losses and in any case had no profits to show, the JDCC Bank gave a donation of Rs.21 lacs to Jalgaon Khandesh Bhookampa Sahayata Trust, floated by Shri. Jain, which was contrary to the norms issued by the RBI. The said norms laid down that donations should be given by the bank only when it is in profit and that too only to the extent of Rs.10,000/-. This amounted to a corrupt practice.

The resolution to give the said donation to the said Trust was passed by the Board of Directors of the JDCC Bank even before the Trust was conceived. While the resolution of the Board of Directors is of 8.2.2001, the first meeting to establish the Trust was organised only on 9.2.2001.

(xxii) All the donations for the relief of the victims of the said Gujarath earthquake were, according to the government directions, to be credited to the Chief Minister's Fund. However, the JDCC Bank gave the said donation of Rs.21 lacs to the said Trust. This was inspite of the fact that the District Deputy Registrar had specifically pointed out the said



government directions to Shri.Jain, in his capacity as the Chairman of the JDCC Bank, on 3.2.2001.This was a corrupt practice.

(xxiii) The JDCC Bank had asked the permission from the government to give the said donation to Jalgaon-Khandesh Bhookampa Sahayata Trust, but no such sanction has been given by the government till date.

(xxiv) The above findings amply demonstrate that Shri.Jain was running the JDCC Bank as his own personal domain and as per his own will, disregarding all laws and directives.

JALGAON MUNICIPAL COUNCIL

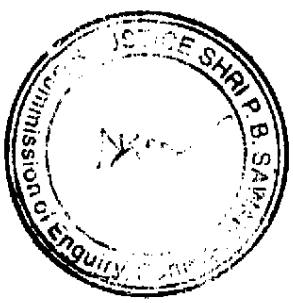
(xxv) Shri.Jain being for all practical purposes incharge of the JMC, was responsible for the non-recovery of the compensation amount from M/s. Golani Brothers, for the delay in the completion of the Golani Market. The compensation amounted to a huge amount of Rs.25,000/- per day of delay, for about 12 years. This amounted to a corrupt practice.

On the other hand, Shri. Jain was responsible for granting the compensation of Rs.2.5 crores to M/s. Golani Brothers for the alleged delay in the construction, although there was no stay granted by any authority or Court for the construction of the Golani Market and, therefore, there was no

delay at the instance of the JMC. Thus not only the JMC lost the penalty recoverable from M/s.Golani Brothers under the contract for the delay in the construction of the Golani Matrket but it also lost a sizeable amount of the property tax for the period of the said delay. This was the result of the corrupt acts on the part of Shri. Suresh Jain.

Gharkul Yojana

(xxvi) The construction of the houses under the Gharkul Yojana at nine different sites, would appear to have been undertaken for the benefit of M/s.Khandesh Builders, with whom Shri. Jain was in hand and glove. In the first instance, the tenders were split in two parts of the scheme, namely, the construction at 6 sites and the construction at 3 sites, which prevented the big contractors from bidding for the contract of the construction. Secondly, allegedly only two tenders were received for the construction pursuant to the tender notice, one as usual from M/s.Khandesh Builders for all the nine sites and another from M/s.Golani Brothers for construction at three sites. But although the tenders submitted by M/s. Golani Brothers were for lower costs than those submitted by M/s. Khandesh Builders, only M/s. Khandesh Builders were invited for negotiations. The tenders submitted by M/s.Khandesh Builders



quoted cost which was 40 to 48 per cent higher than the estimated cost, and the tenders submitted by M/s. Golani Brothers were for costs 25 to 27 per cent higher than the estimated cost. The tenders submitted by M/s.Khandesh Builders were also subject to certain terms and conditions, mentioned in their letter accompanying the tenders. Those terms and conditions were, firstly, the work order was to be issued to the contractors within a specified time and the mobilisation advance of 15 per cent of the costs was to be paid to them within 15 days of the issue of the work order. The construction was, however, to start only after all the sites were given in their possession. In the negotiations again, M/s.Khandesh Builders agreed to reduce costs only to 17.5 per cent above the estimated costs. Secondly, the office note of the JMC had pointed out that if the tenders were above 10 per cent of the estimated costs, the government directions required that fresh tenders should be called. The office note had also pointed out that the terms and conditions placed by M/s. Khandesh Builders were a modification of the original tender and hence, on that account also fresh tenders should be invited. However, the JMC, obviously under the leadership of Shri. Jain disregarded the office objection and invited only M/s. Khandesh

Builders for negotiations, and in the negotiations, as stated earlier, M/s. Khandesh Builders reduced the costs only to 17.5 per cent above the estimated costs. Inspite of it, the contract was given to them. M/s. Golani Brothers were not invited even for a talk.

Although the sites for construction were also changed, M/s. Khandesh Builders were given the contract without calling fresh tenders, and their contract continued for the new sites.

The granting of the contract to M/s. Khandesh Builders was thus patently illegal and an act of corruption.

(xxvii) The JMC had no sites, except one and a part of another, in their possession on the date when the work order was issued to M/s.Khandesh Builders. Even on the sites which were in possession of the JMC, the construction could not be started because the change of user of the land at these sites, was not cleared by the State Government, which was necessary under the provisions of section 37 of the Maharashtra Regional Town Planning Act. This was also a case of corruption.

(xxviii) The permission from the Maharashtra Jeevan Pradhikaran was necessary for the construction as stated by the

concerned municipal engineer, which was not taken. This was also a case of maladministration.

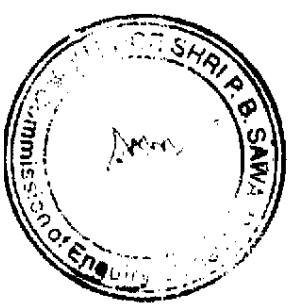
(xxix) The JMC was thus guilty of all the above acts of illegalities, corruption and maladministration. The evidence also shows that out of corrupt motives, undue favours were made to M/s. Khandesh Builders, which as stated earlier was nothing but Shri. Jain's front.

Airport

(xxx) Although it is not either an obligatory or a discretionary duty of the Municipality to construct, develop and maintain an airport, the JMC took over the said work from the State Government and spent about Rs.6 crores on it from the year 1999 onwards. This was done even without taking permission of the Director General of Civil Aviation, which is a must. That permission is not yet received from the Director General of Civil Aviation.

The contractor engaged for the purpose of the construction of the airport has an amount of Rs.3.18 crores lying with him without interest.

The Municipality undertook the construction of the airport inspite of the fact that the Jalgaon city is without drainage facilities, which is the basic civic need of the city. This



also shows a callous disregard for the obligatory duties as well as for the basic infrastructure and civil amenities.

This is a clear case of a gross mismanagement of the affairs and funds of the JMC and, therefore, a patent case of maladministration.

Waghur Project

(xxxi) The JMC undertook the work of laying pipeline for supply of water from the Waghur dam to the Jalgaon city in the year 1999, although the Waghur dam was not complete then and is not complete as yet. A part of the land for laying the pipeline was also not available and in possession of the JMC when it started the work. These parts of the land were covered by the National Highway, the State Highway and the forest-land. The permission from the relevant authorities was also not obtained for taking the pipeline through these lands at the time the work of the pipeline was started. The permission from the authorities of the National Highway and the State Highway were received only in 2004, while the permission from the Forest authorities is not received till date. Yet, the contractor engaged for the work, namely, Shri. Kotecha, who is one of the trustees of the Jalgaon Khandesh Bhookampa Sahayata Nidhi was paid as much as Rs.33.53 crores from the year 1999 onwards. Out of the said

amount paid to the contractor, Rs.11.89 crores are still lying with him without interest. According to the engineer of the JMC, no more than one-year's period is required for laying down the entire pipeline from the Waghur dam to the Jalgaon city, and the JMC also knew the aforesaid obstructions that they may have to encounter in the construction of the pipeline. When it is remembered that the entire project was being financed by taking loans from the HUDCO and the JDCC Bank at the rate of interest of 13.75 per cent per annum and 16 per cent per annum, respectively, the extent of the maladministration of the funds and the affairs of the JMC becomes evident. As Shri. Joshi has pointed in his report, the work which is left half done, is also bound to affect adversely the quality of the pipeline, which is already laid.

This is yet another instance of gross maladministration of the funds and the affairs of the JMC.

Commercial Complexes

(xxxii) The JMC undertook the construction of four commercial complexes in 2000-01, namely, Veer Savarkar Complex, Sane Guruji Compex, Swami Vivekanand Complex and Sagar Park, at the total cost of Rs.38.63 crores. Only two tenders were received, namely, one as usual from M/s.

Khandesh Builders and another from one M/s. Unity, which had the same postal address and the telephone number as of M/s. Khandesh Builders. As expected, the tenders of M/s. Khandesh Builders were accepted for all the four complexes. This also proves that M/s.Khandesh Builders was a front of Shri.Jain. This was a patent act of corruption.

(xxxiii) The JMC had taken loans from the JDCC Bank in the years 1997 and 2001 by mortgaging its own property. Section 92 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, requires the JMC to take permission of the Government for mortgaging its property, which permission was not taken by it. This is yet another case of maladministration.

JALGAON KHANDESH BHOOKAMPA SAHAYATA TRUST

(xxxiv) There was irregularity in the appointment of the trustees of the Trust. Shri. Ishwar Jain, the vice chairman of the Trust, though not present in the meeting, dated 9.2.2001, in which the decision to establish the Trust was taken, is shown to have moved the resolution to establish the Trust.

Though Shri.Ratanlal C. Bafna is shown in the records of the Charity Commissioner as one of the trustees, his name does not appear in the trust deed as a trustee.

These are obvious irregularities, amounting to maladministration.

(xxxv) The provisions of the Income Tax Act require full details of the donors who give donations of Rs.5,000/- and above. However, the Trust has not kept the full details of such donors.

These are obvious irregularities, amounting to maladministration.

(xxxvi) Shri. Jain has stated in his written reply before the Commission that he had donated to Rs.51 lacs to the Trust. However, in his deposition before the Commission he stated that the statement, which he had made in the reply, was wrong and he had donated no amount whatsoever to the Trust. Shri. Jain is guilty of making a false statement before the Commission.

It is worth noting here that the difference between the amounts shown in the minutes of the meetings and in the accounts (which accounts are admitted to have been written at a later date) is exactly Rs.51 lacs.

(xxxvi) Though the Trust was resolved to be dissolved in the meeting held on 29.9.2001, not only it is not yet dissolved but, in fact, donations amounting to Rs.6 lacs were collected

after that date. This shows a patent maladministration in the management of the Trust.

(xxxviii) The nature of the receipt of Rs.8 lacs from Shafi Mohammed has not been explained. This is also an act of maladministration of the Trust.

(xxxix) There is no account kept of the total number of receipt books/receipts utilised for collecting the donation, and consequently there is no record of the total donations collected other than what is shown in the accounts. This is an instance of maladministration.

(xl) Though it is claimed that with the funds collected by the Trust, schools were constructed as a joint venture of the Trust and the Bharatiya Jain Sanghatana, there are no details of the expenses made on the construction of the schools available with the Trust. This is yet another instance of maladministration.

(xli) The Trust did not submit the annual budget as required by the provisions of the Bombay Public Trusts Act. It also did not submit its audited accounts in time to the Charity Commissioner. This being contrary to the provisions of the Bombay Public Trusts Act, is an illegality.

Thus Shri. Suresh Jain is guilty of the acts of corruption stated at (ii), (v), (vii), (viii), (ix), (xi), (xxii), (xxxiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxv), (xxvi), (xxvii) and (xxxii), above.

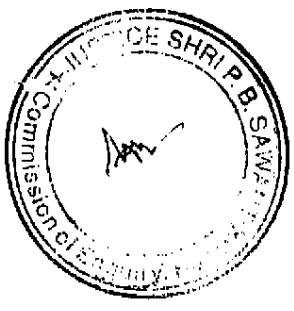
He is guilty of maladministration for the acts as stated at (iv), (x), (xxviii), (xxx), (xxxi), (xxxiii), (xxxiv), (xxxv), (xxxvi), (xxxviii), (xxxix), (xl) and (xli), above.

He is guilty of making a false statement as mentioned at (xxxvi), above.

Place: Pune

Date: 22nd February, 2005

[Justice P.B.Sawant (Retd.)]
Commission of Inquiry



CHAPTER V

ALLEGATIONS AGAINST SHRI. NAWAB MALIK

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ALLEGATIONS AGAINST SHRI. NAWAB MALIK

In this inquiry the Commission is required to investigate into the charges of the alleged corrupt practices and mal-administration by Shri. Nawab Malik, Minister of State for Housing, in the matter of redevelopment of the property known as Jariwala Chawl, T.H. Katariya Marg, Mahim, Mumbai.

2) Briefly stated the circumstances leading to the charges are as follows: -

There are a number of buildings, which are identified by letters A, B, C, D, F, G, H and I together with the land known as Jariwala Compound. It is situated on a plot, bearing No. 231 of T.J. Katariya Marg, Mahim, Mumbai, which admeasures about 6000 square metres.

3) There was a dispute with regard to the actual area of the plot on account of the differences in the area shown in the record and which was allegedly found on the actual verification. The property originally belonged to a concern known as "M/s. Galaxy Builders", who later on seem to have transferred the same to "M/s. Raj Doshi Export Private

Limited". In any case M/s. Raj Doshi, later on all along represented themselves as the Power of Attorney Holders of M/s. Galaxy Builders. The owners, sometime in the year 1982, reconstructed the buildings "G, H and I" without obtaining the No Objection Certificate from the Maharashtra Housing and Area Development Authority (MHADA). It appears that the MHADA had proposed the acquisition of the property consisting of the buildings "A, B, C and D" together with the land on which they stood, which property admeasured 2807.15 square metres in area as per the proposal. The acquisition was to be under Sections 92 and 93 of the MHADA Act, 1976. The acquisition went through and finally the property vested in MHADA on 23rd August, 1990. It appears that being aggrieved by the said acquisition, M/s. Galaxy Builders, the then owners, alongwith the tenants of the buildings filed Writ Petition No. 3672 of 1990 in the High Court of Bombay. The petition was admitted and an interim order of status quo was passed therein, on 11.12.1990. It appears that an appeal was filed against the interim order of the "status quo" but was later on withdrawn. The Writ Petition was finally heard and by order dated 4.8.1994, was dismissed (exhibit 21).

4) In the meanwhile M/s. Galaxy Builders had either transferred the property to M/s. Raj Doshi Exports Private Limited or given them the power of attorney. After the petition was dismissed, M/s. Raj Doshi Exports Private Limited made a request to the Government that they be allowed to develop the property and the State Government on 24.5.1996 directed the Chief Officer of the Repairs and the Reconstruction Board of MHADA to issue a conditional letter of intent to them. The Board accordingly on 13th June, 1996 issued a letter of intent to them incorporating in it, in addition to the usual terms and conditions, a condition that they should obtain the consent of 70 per cent of the occupants to the reconstruction proposed by them as directed by the Government. It appears further that since M/s. Raj Doshi Exports Private Limited could not comply with the conditions in time, further extensions were granted to them to comply with the same. However, since they could not comply with the same, the letter of intent granted to them came to an end on 30th June, 1998.

5) In the meanwhile, about eight occupants of the building "D" who had shifted to the Transit Camp filed Writ Petition No. 1114 of 1998, contending that the MHADA itself should take up the reconstruction. At the stage of admission on

8th July, 1998, the Government Pleader made a statement that the MHADA would take the necessary steps to reconstruct the said building within a month. The statement was recorded and on the basis of the same, the petition was disposed of.

6) In the meanwhile some developments which had bearing on the proposal for the reconstruction of the property had taken place. The Committee known as "Sukhatankar Committee" appointed by the State Government had recommended that for residential occupation, the minimum area should be 225 square feet instead of the earlier 180 square feet. As a result, the occupants refused to give consent for reconstruction unless the developers/MHADA agreed to give them the minimum 225 square feet for their occupation. Since the report of the Sukhatankar Committee was not accepted by the Government till 1999, revised plan for development of the building was not prepared by MHADA till that time. However, after 1999 the MHADA prepared a revised plan and on 24.3.2000 invited tenders, initially to carry out the reconstruction of the building "D" since that building was already demolished and its occupants were in the Transit Camp since May/June, 1988. M/s. C. B. & Sons was one of the bidders who had responded to the

tenders invited by MHADA and its tender was accepted by MHADA on 5.7.2000.

7) There were two main groups among the occupants of the buildings and it appears that some of them were changing their stances from time to time. This has relevance to the inquiry since one group headed by one Shri. Uday Desai had played a crucial role in obtaining the questionable stay orders from Shri. Nawab Malik stopping the reconstruction which was undertaken by MHADA. The other group which had many in it stranded since 1988 in the Transit Camp, was insisting upon the expeditious reconstruction by MHADA. It may be pointed out that the present charges against the Minister, Shri. Nawab Malik have been levelled at the instance of this group which had approached the Lok Ayukta complaining about the alleged malpractices by the Minister and the Lok Ayukta had made his report in the matter holding in terms, the Minister guilty of the charges levelled against him. We will discuss about it, a little later.

Against this background, it will be convenient at this stage to enumerate chronologically the events which took place and which have a bearing on the issues which fall for consideration in the present inquiry :-

i) In November, 1981 M/s. Galaxy Builders purchased the entire Jariwala property from its owners.

ii) In May/June, 1988 Building "D" was demolished dishousing its 52 tenants.

iii) On 23.8.1990, MHADA acquired sub-plot "B" with buildings "A" to "D" under Chapter VIII of MHADA Act, 1976.

iv) On 11.12.1990 at about 11.00 to 11.30 a.m. the Collector handed over possession of sub-plot "B" to MHADA.

v) On 11.12.1990 M/s. Galaxy Builders and 124 tenants filed Civil Writ Petition No. 3672 of 1990 in the High Court and the High Court ordered status quo. The State of Maharashtra was one of the opponent to the Writ Petition.

vi) On 4.8.1994 Civil Writ Petition No.3672 of 1990 was rejected.

vii) On 24.5.1996 the State Government directed issuance of the grant of Letter of Intent to the Attorney of the erstwhile owners, namely, M/s. Raj Doshi Exports Private Limited.

viii) On 13.6.1996 conditional letter of intent (exhibit 41) was issued by MHADA to M/s. Raj Doshi Exports Private Limited.

ix) On 30.6.1998 the letter of intent expired as the condition of securing consent of 70 per cent of the occupants was not fulfilled.

x) In June 1998 Civil Writ Petition No. 1114 of 1998 was filed by Shri. Uday Desai and others against MHADA and others, including the State of Maharashtra, in the High Court requiring MHADA to reconstruct.

xi) On 8.7.1998, Civil Writ Petition No. 1114 of 1998 came up for hearing and in view of statement made on behalf of MHADA undertaking to start reconstruction within one month, the said civil writ petition was disposed of by the High Court as "Not Pressed".

xii) On 14.7.1998 MHADA issued notices to occupants of buildings A to C to vacate.

xiii) On 25.6.1999 MHADA obtained sanction from Municipal Corporation of Greater Mumbai for the revised plans to comply with the new government policy of offering 225 square feet to each tenant.

xiv) On 18.10.1999 Shri. Malik became Minister of State for Housing, hereinafter referred to as "the opponent".

xv) On 24.3.2000 MHADA invited tenders for reconstruction.

xvi) On 5.7.2000 the tender of M/s. C. B. & Sons was accepted by the MHADA.

xvii) On 1.8.2000 M/s. Raj Doshi applied to MHADA for permission/NOC for redevelopment claiming consent of more than 70 per cent of the occupants.

xviii) On 4.9.2000 a meeting was called by the opponent which took place in his chamber to discuss the proposal of M/s. Raj Doshi.

xix) On 7.9.2000 a notice of motion bearing No.316 of 2000 in Civil Writ Petition No. 1114 of 1998 was taken out by Shri.Uday Desai and others.

xx) On 13.9.2000 MHADA issued work order to M/s. C. B. & Sons.

xxi) On 29.9.2000 the opponent recorded the order of stay of the work order issued to M/s. C. B. & Sons till High Court orders.

xxii) On 31.10.2000 the notings (exhibit 143) were submitted to the opponent pointing out the serious implications of the opponent's order, dated 29.9.2000.

xxiii) On 1.11.2000 the opponent called for the opinion of Law and Judiciary Department, on the same nothings.

xxiv) On 14.11.2000 letter of the Chief Officer, Repairs & Reconstruction Board of MHADA, dated 13.11.2000 addressed to the Secretary, Housing reached Repairs & Reconstruction Desk through Registry, requesting the lifting of the stay granted by the opponent (exhibit 86). No action was taken on the letter.

xxv) On 2.12.2000 upon a statement by MHADA that the entire work of reconstruction would be completed within 18 months, notice of motion No.316 of 2000 was rejected by the High Court. Hence, the stay given by the opponent came to an end.

xxvi) On 20.12.2000 M/s. C.B. & Sons commenced construction.

xxvii) On 22.1.2.2000 witness No. 12 Shri. Vijay Patil, the then Police Inspector of Mahim Police Station, stopped the work.

xxviii) On 27.12.2000 Municipal Corporation of Greater Mumbai issued stop work notice to MHADA.

xxix) On 11.1.2001 the Housing Department received opinion of Law and Judiciary (exhibit 145). It states that it will not be legally feasible to grant stay to the work order.

xxx) On 24.1.2001 notings (exhibit 146) with opinion of Law & Judiciary reached office of the opponent. (The opponent

says he had not seen it till 18.7.2001 though the notings on exhibit 146 show that the same had reached the opponent at his office on 24.1.2001.)

xxxi) On 15.2.2001 the opponent recorded his second order of stay (exhibits 146 and 167).

xxxii) On 17.3.2001 order of the opponent communicated by Shri. I.M. More.

xxxiii) On 18.7.2001 the opponent ordered lifting of the stay and unification of all the files.

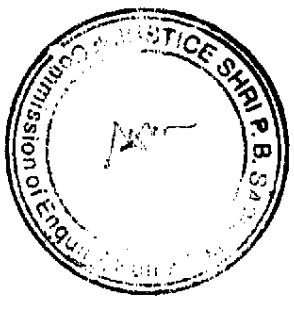
xxxiv) On 30.7.2001 complaint was made by some of the tenants to the Lok Ayukta. The said tenants are complainants before the Commission.

xxxv) On 10.8.2001 the opponent received notice of Advocate, Suresh Mali, dated 7.8.2001 (exhibit 159) requiring him to comply with the orders of the High Court, dated 8.7.1998, in Writ Petition No. 1114 of 1998.

xxxvi) On 20.11.2001 the opponent entered appearance before the Lok Ayukta and sought adjournment.

xxxvii) On 26.11.2001 the stay order of the Government, dated 15.2.2001/17.3.2001 was vacated.

xxxviii) On 27.11.2001 the opponent submitted reply before the Lok Ayukta.



xxxix) On 2.1.2002 witness Shri. Jayant Shastri, the Police Inspector, issued notice under section 149 of the Criminal Procedure Code.

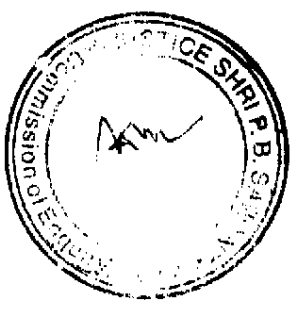
xl) On 31.1.2002 Civil Writ Petition No. 300 of 2002 filed by Shankar Rajanna and others against MHADA and others objecting to the construction by MHADA came up for admission, but the High Court directed MHADA to proceed with the work, without admitting it.

xli) On 15.2.2002, the High Court issued directions in Civil Writ Petition No. 300 of 2002 appointing Shri. Rahul Kadri, Architect, to inspect the quality of the construction by M/s. C. B. & Sons.

xlii) In April, 2002 the S.L.P. No. 6991 of 2000 filed by M/s. Galaxy Builders and S.L.P. No. 7308 of 2002 filed by Shri. Shankar Rajanna came up for hearing before the Supreme Court. It was adjourned for four weeks.

xliii) On 26.4.2002 a letter was written by Shri. I.M. More to MHADA and others asking them not to submit any scheme to the Hon'ble Supreme Court without the approval of the department.

xliv) On 10.5.2002, the Hon'ble Supreme Court issued directions to consider the proposal submitted by 70 per cent



tenants, independently and without being influenced by the decision of the High Court in Civil Writ Petition No.3672 of 1990.

8) These events show, among other things, that before the opponent became Minister of State for Housing on 18.10.1999, the acquisition of the property in question was complete and the challenges made to the acquisition in the High Court had failed by virtue of the order dated 4.8.1994 in Writ Petition No. 3672 of 1990. The MHADA had thereafter issued a letter of intent for construction on 13.6.1996 to M/s. Raj Doshi Exports Private Limited, the attorneys to the erstwhile owners M/s. Galaxy Builders. This Letter of Intent expired on 30th June, 1998 for want of fulfilment of the conditions. The group of tenants led by Shri. Uday Desai and others had then filed a Writ Petition No. 1114 of 1998 in the High Court, seeking a direction to the MHADA that they should themselves start the construction and develop the property. In that petition the MHADA made a statement that the necessary steps to reconstruct the property would be initiated by the issue of notices to the tenants within one month and that the project would be completed as expeditiously as possible. In view of this statement made on behalf of the MHADA, the High Court had dismissed the petition on 8.7.1998 "as being not pressed". The

MHADA had thereafter proceeded with the programme of construction by issuing notices on 14th July, 1998 to the occupants of the buildings "A" to "C", to vacate. On 25th June, 1999, it had also obtained sanction from the Municipal Corporation of Greater Mumbai for the revised plan to comply with the new government policy of offering 225 square feet to each of the tenants.

9) It is in the light of these developments that the actions of Shri. Malik in ordering the stay of the construction by the MHADA, first on 29.9.2000 and later on 15.2.2001 which, have become the subject matters of the allegations of corrupt practices and mal-administration against him, are required to be probed into in this inquiry.

10) To do so, the following six issues have been framed at the very commencement of the Inquiry, which need to be answered.

ISSUES

(1) Why was the order dated 29th September, 2000 passed by the opponent, when he had taken the view in the meeting on 4th September, 2000 that if the occupants want change in the order which was passed by the High Court

directing the MHADA to proceed with the work, they should approach the High Court ?

(2) It further appears that he has passed another order of stay of the construction on the 15th February, 2001, which order is communicated to the Repairs Board by letter dated 17.3.2001 and referred to in the Government's letter of 26th November, 2001 to the Repairs Board. What were the circumstances under which and the purpose for which this order was passed?

(3) There is a letter written by Shri. More, Under Secretary of the State Government to MHADA on 26th April, 2002 asking MHADA to get clearance of the affidavit to be filed before the Supreme Court in the two S.L.Ps. pending before the Supreme Court. Is this letter written at the instance of Shri. Nawab Malik ?

(4) Did Inspector Vijay Patil, in-charge of the Mahim Police Station, detained Shri. Ravi Kumar, the Deputy Engineer, MHADA, Architect, Shri. A.B. Gangal and Shri. Kalal of M/s. C.B. & Sons on 22nd December, 2000 at the instance of Shri. Nawab Malik ?

(5) Was the notice issued by Shri. Jayant Shastri, Senior Inspector of Police of Mahim Police Station on 22nd January,

2002 to the Executive Engineer of MHADA, Shri. S.R. Paliwal under section 149 of the Criminal Procedure Code at the instance of Minister, Shri. Nawab Malik ?

(6) Were M/s. Galaxy Builders, M/s. Raj Doshi Export Private Limited, Uday Desai and Minister Shri. Nawab Malik acting in collaboration with each other with a view to obstruct the reconstruction of the building by MHADA ?

ISSUE NO.1 :-

11) The minutes of the meeting held on 4th September 2000 in the chamber of Shri. Nawab Malik show that the meeting was held at the instance of Shri. Nawab Malik himself. The purpose of the meeting as evidenced by the minutes, was to consider the request of M/s. Raj Doshi Export Private Limited, the Attorneys of the erstwhile owners of the property for constructing the property themselves. This meeting was attended amongst other by the group of the occupants supporting M/s. Raj Doshi Export Private Limited and the Chief Executive Officer of the Mumbai Repairs and Construction Board, Smt. Vandana Khullar. She pointed out to the Minister that the property in question was acquired by the MHADA for reconstruction by them and the same was in possession of the Repairs Board. M/s. Raj Doshi Export Private Limited, the

attorneys of the owners of the property, were given the Letter of Intent, according to their request, twice, and inspite of the extension of the period given to them, they had failed to fulfil the conditions of the Letter of Intent and hence it was cancelled. She also stated that all the requirements for the reconstruction of the property had been completed by the Repairs Board, and the tender for construction was also accepted by it. All that had remained to be done was to give the work order to the contractor to start the work. She had further pointed out that if the Repairs Board executed the said scheme of reconstruction, surplus tenements would be available to it on a large scale, and in these tenements, the tenants in the Transit Camps on the general list of the Board could also be accommodated. She further pointed out that the reconstruction would cost about Rs. 7,50,00,000/- (rupees seven crores and fifty lacs only). She also pointed out that the erstwhile owners of the property had filed a writ petition in the High Court challenging the acquisition which was dismissed in the year 1994. It was also pointed out by her that there were two groups of the occupants in the property and that one group opposed to the reconstruction of the property by the erstwhile owners while the other group was supporting the proposal of the owners

to reconstruct the property. The former group approached the High Court for reconstruction of the property by the Board and in that petition the MHADA had made a statement before the Court that it would reconstruct the property.

In this meeting one Harish Mehta, the representative of the erstwhile owners had stated that although the owners could not fulfil the condition of the Letter of Intent earlier, the owners had since received the consent of about 80 per cent of the occupants for reconstruction of the property by them and, therefore, requested that the owners should be given the permission to reconstruct the property. Some of the occupants of the property also stated that although they had approached the High Court earlier, asking the Repairs Board to complete the construction, they were now supporting the owners' proposal for reconstruction of the property by them. As has been pointed out by the complainant-tenants, they were not invited for the said meeting and hence were not present. It appears that the meeting was stage managed by the erstwhile owners with the help of the supporting tenants.

On this the Minister Shri. Nawab Malik stated that since the High Court had given the directions that the Board should reconstruct the property, it was their duty to honour the

Court's directions and that if the owners wanted to reconstruct the property they should approach the court for obtaining the necessary directions. It is only thereafter that "no objection certificate" will be issued to them after examining the matter. It is necessary in this connection to point out that as has been stated by Shri. Paliwal, the Executive Engineer of the Repairs Board in his deposition before the Commission, the Board had already obtained the administrative sanction from the Government for the budget of Rs.7,50,000,00/- for the reconstruction of the said property and it is thereafter that the tenders for reconstruction were invited and the tender of one M/s. C.B. & Sons was accepted. All that had remained to be done was to issue to the said contractor the work order as stated earlier. It was after this meeting that on 13.9.2000 the work order was issued by the Board to the contractor M/s. C.B. & Sons. The minutes of the meeting of 4th September 2000 thus clearly show that the opponent was fully aware of the fact that there was a statement made by the Board before the High Court that the Board would complete the work. He was also aware that earlier opportunities were given to the owners to reconstruct the property and inspite of the extension given to them, they had failed to obtain the consent of the tenants as

required by the Letter of Intent. He also knew that it would be a defiance of the order of the Court, if the Board was not allowed to reconstruct the property and the work of reconstruction was given to anyone other than the Board's agency. In fact, he had himself suggested that if any change in the order of the Court was required, it was for the owners and the concerned tenants supporting them to approach the Court and to get the directions accordingly. Yet, he passed the order staying the construction by the Board on 29th September, 2000 after the Board had issued the work order to its contractor M/s. C.B. & Sons, on 13.9.2000. The reasons which he has given before the Commission for passing the order was that the tenants had approached the High Court for getting the modification of its earlier directions and that the number of tenants who were supporting the reconstruction by the owners was a large one. His second contention is that it would have benefited the Government, since the Board would not have been required to spend the money for reconstruction, and his third contention is that such an arrangement was supported by the order of the Supreme Court in another property, namely, the Pimpalwadi property of Girgaon, Mumbai, and the Government's policy decisions of

1.12.1984 and of 5.7.1985 (exhibits 97 and 98, respectively) in such matters.

12) As regards the first contention, admittedly, nothing had happened between 4th September 2000 and 29th September 2000 to change the legal position and the order of the High Court had continued to operate. Mere filing of an interlocutory application and that to in a writ petition, which had already been finally disposed of, cannot amount to changing the order of the Court passed on 8.7.1998 in the Writ Petition No. 1114 of 1998 i.e. more than two years earlier. It must be remembered in this connection that this order was passed in the writ petition which was filed by the same tenants who were now supporting the erstwhile owners. The High Court had not passed any interim or ad interim stay order in the said interlocutory application, namely, Notice of Motion No.316 of 2000, which came to be filed on 7.9.2000. On the other hand, the Repairs Board had already issued work order to their contractor M/s. C.B. & Sons on 13th September 2000. It was, therefore, obvious that the opponent had taken upon himself the role of the High Court and issued the stay order which undoubtedly amounted not only to interfering with the High Court's order of 8.7.1998 but also to defying it. It is necessary in this connection to

remember that the High Court later dismissed the said Notice of Motion of the tenants on 2nd December, 2000 by pointing out in terms that it is the very same tenants who had approached the Court by the said motion for a relief contrary to the one which they had prayed for in the Writ Petition No. 1114 of 1998 in which the motion was taken out. Since the stay order given by the Minister on 29.9.2000 (exhibit 17) was upto the order of the High Court, the order of the Minister came to an end on 2.12.2000. It must be remembered that the Minister's stay order of 29.9.2000 was cited as "Urgent" and was specifically to stay the work order which was issued by the Repairs Board to M/s. C.B. & Sons on 13.9.2000. The order was directed to the Secretary, Housing as well as to the Chief Officer of the Repairs Board. In face of this, the contention advanced on behalf of the Minister, that the Minister's order was not a stay order and was not treated as such, has no force. As is admitted by both the witnesses, I.M. More, the Deputy Secretary in the Housing Department and Paliwal, the Executive Engineer in the Repairs and Reconstruction Board, the order was of a binding nature. It is immaterial whether by the 29th September, 2000 the contractor had started his work pursuant to the work order dated 13th September, 2000 or not.

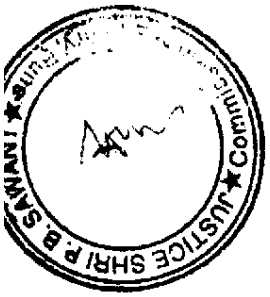
13) His second contention, namely, it would have benefited the Government since the Board would not have been required to spend the money, is also untenable. In the first instance, if this was so, the Government itself could have approached the Court to point out the same and got the High Court's order revised. Secondly, as was pointed out to the Minister by the Chief Officer, Smt. Khullar, in the meeting of 4th September, 2000, the construction by the Board could make available a number of surplus tenements where the tenants in the Transit Camps and on the general list of the Board could be accommodated. If the construction by private owner was more advantageous, the matter could have been discussed in the same meeting and the advantages and disadvantages could have been thrashed out with the help of the Board officials. This was never done. It is for the first time that the said contention was raised before the Commission. Lastly, the budget of Rs.7,50,000,00/- was already sanctioned for the reconstruction and it is only thereafter that the tenders for reconstruction were invited by the Board. On the acceptance of the tender and the issuance of the work order, the stoppage of work unilaterally, might have also invite a claim for damages against

the Board. The Minister appears to have paid attention to the said aspect.

14) The third contention is based on the misconception of law. The provisions of the Act in this behalf are very clear. The properties acquired by the MHADA under Chapter VIII of the Act for reconstruction cannot be given back to the property owners. There is no provision in the said Act to do so. The construction thereafter has to be done by the Board itself or through its agencies. This has been made clear also by the judgement of the Bombay High Court, dated 30.4.2002 in the matter of Pimpalwadi property in the Writ Petition Nos. 1366 and 1288 of 2001. The emphasis in this behalf laid on the wordings of the order dated 10.5.2002 of the Supreme Court in S.L.P. Nos. 6991 and 7308 is misleading. The said order has been passed by way of a compromise arrived at between the parties. It is not a judgement giving reasons and interpreting the relevant provisions of the Act. The order was in fact invited by the State Government and the MHADA in the specific circumstances of the case. It was also an order passed in the absence of the tenants opposing the private development. The concerned tenants intervened only on 20.9.2002. It must further be remembered in this connection that until the

submission of the last of the affidavits in that matter by Shri. Paliwal, the State Government's consistent and firm stand there was that such a course was impermissible in law. The reliance placed on the Government's policies allegedly contained in the circular letters dated 1.12.1984 and 5.7.1985 (exhibits 97 and 98, respectively) by virtue of which even the property acquired by MHADA under Chapter VIII of the Act for reconstruction could be given for private development provided 70 per cent or more occupants consent for such development, is misplaced for passing the said order by the Minister. In the first instance, no Government policy can change the law laid down in the statute, and, secondly, that policy could not change the decision of the High Court in the present case as well as the judgement of the Bombay High Court in Pimpalwadi case delivered in Writ Petition Nos. 1366 and 1288 of 2001, on 30.4.2002.

15) As is evident from Shri. Malik's deposition in paragraph no.10 that he had conveyed the meeting of 4th September, 2000 at the instance of the General Secretary of his Party, Shri. Gurunath Kulkarni, who had asked him to look into the grievance of his party activist, Shri. Uday Desai, who was leading the tenants supporting the private developer, namely, the erstwhile owners, is not disputed. In fact, in the meeting of



4th September, 2000 the cause of the private developer was being advocated by one Shri. Hemendra Mehta, a Member of Legislative Assembly. The private developer was also present in the said meeting alongwith Shri. Uday Desai and the tenants led by him amongst others. Although in that meeting Shri. Malik directed the tenants and the erstwhile owners to approach the High Court to get the order revised, as admitted by him on 28th September or 29th September 2000 Shri. Gurunath Kulkarni had again given him a ring and complained that although Shri. Malik had directed the tenants to get the revised order from the Court, the MHADA was starting the work and hence he should give directions to MHADA not to proceed with the work till the orders from the Court are received. Upon the same Shri. Malik had told Shri. Kulkarni that he should send Shri. Uday Desai and tenants to him with a representation in the matter and accordingly Shri. Desai had met him on 29th September, 2000 at 2.00 p.m. in the Mantralaya. He had then asked his private secretary and told him to give directions to the concerned persons to stop the construction till the orders from the Court are received. Accordingly his private secretary had prepared a letter incorporating his directions and he had signed the same. He has also, again in paragraph 26 of his deposition categorically

admitted that he has given the directions to stay the construction because of the phone call from Shri. Gurunath Kulkarni and the representation given by the tenants.

16) The Issue No.1 has, therefore, to be answered as follows.

The opponent has passed the order dated 29th September, 2000 staying the order of the High Court only with a view to facilitate the erstwhile owners to get the revised order from the High Court to enable them to reconstruct the property in question themselves. This was done, both at the instance of the said owners as well as the tenants who were supporting them. These tenants were led by Shri. Uday Desai, who was admittedly the worker of Nationalist Congress Party, to which the opponent belonged.

ISSUE NO.2 :-

17) The order dated 15th February, 2001 passed by the opponent and communicated by the Under Secretary of the Government, Shri. Ishwar M. More, to MHADA on 17th March, 2001 (exhibit 51) staying the construction by MHADA, to the Chief Officer of the Repairs Board, is still more intriguing. Whatever the excuses, which the opponent had given for passing the order on 29th September, 2000 with which we have already

dealt with above were certainly not available to him on 15th February, 2001. It must be remembered in this connection that the High Court by its decision dated 2nd December, 2000 had already dismissed the notice of motion taken out by the (busy body) of the tenants supporting the erstwhile owners and hence the excuse available prior to 2nd December, 2000, namely, that the tenants concern had approached the High Court for getting the modification of the High Court's earlier directions, was also not available to the opponent on 15th February, 2001. However, the opponent has tried to circumvent the order of 29.9.2000 by contending that it was not an order but only a direction. We have dealt with this point earlier while dealing with the order of 29.9.2000. Exhibit 51 which is a communication dated 17th March, 2001 conveying the order of the opponent passed on 15th February, 2001 to the Chief Officer of the Repairs Board is a sufficient answer to the opponent's contention in this behalf. It tells the Chief Officer of Repairs Board in terms that the opponent has given a direction to stay the scheme of construction of the property in question and requests the Chief Officer to implement the direction accordingly. Shri. More was an Under Secretary for Government of Maharashtra working in the very same Housing Department of which the opponent was

the Minister for State. The Repairs Board works under the Housing Department and the communication is sent to the Chief Officer of the Repairs Board by a responsible officer of the Housing Department telling him in terms to implement the order of stay by the opponent. The effect of the order passed by the opponent on 15th February, 2001 has thus been interpreted by the officer working under him as he understood its implications and has communicated the same to the Chief Officer. The effect of both, the order passed by the Minister on 15th February, 2001 and communication (exhibit 51) dated 17th March, 2001 by Shri. More to the Chief Officer was the stay of the Scheme of Reconstruction of the property in question. The futility of drawing the distinction between a "direction" and an "order" by quibling over the words is made clear by the officer of the Government himself, who is working under the opponent. It is, therefore, really not necessary to dwell upon this point. Suffice it to say that if at all any such distinction is being made, it may be in the internal working in the Secretariat. There is no such distinction made in the rules of business and the learned counsel was unable to point out to us any such distinction in the rules of business and under the Maharashtra Housing and Area Development Act. In any case under the provisions of Section

164 (1) of the MHADA Act any instructions or directions given by the Government is binding on MHADA and the Housing Board. That section says that,

> "The State Government may from time to time issue such directions or instructions as it may think fit in regard to finances and conduct of business and affairs of the Authority or any Board and the Authority and such Board shall be bound to follow and act upon these directions or instructions."

All that we may say with regard to such meaningless contention is that we wish that such contentions were not advanced by or on behalf of such a responsible Minister of the Government. It is obvious that the contention is question is advanced only to wriggle out of the illegal order passed by the opponent.

18) The other contention raised justifying the orders of 15.2.2001 and 17.3.2001 is the same as was the contention raised to justify the order passed on 29th September, 2000, namely, that it was the policy of the Government to entrust the work of reconstruction to private developer. We have already dealt with the said contention while dealing with the first issue.

It is, therefore, not necessary to repeat what has been stated earlier. The contention is without any merit as stated earlier.

19) We are in this regard constrained to point out certain unsavoury facts, which have come to our light during the course of recording of the evidence. The first of these facts is that, the Chief Officer of MHADA had written a letter on 13.10.2000 (exhibit 86) to the Secretary, Housing Department, requesting for lifting of the stay order granted by the opponent on 29.11.2000, pointing out that the work order to start construction work was already given to the contractor and in the meanwhile the State Housing Minister i.e. the opponent had passed an order that the work should not start. She had also submitted in that letter that although a few tenants had gone to the Court for obtaining stay of the reconstruction of the property through the Board, the Court had not given any stay order for the Board's Reconstruction Scheme. She had then stated that the tenants in the Transit Camps were pressing very hard for starting the reconstruction work and hence the opponent be requested to lift the stay given by him. Shri. Vasawe (P.W. 20, exhibit 234), the Desk Officer in the Housing Department has deposed before the Commission that this letter was received in the Central Registry on 14.11.2000 and was duly

inwarded and thereafter it was forwarded to the concerned department. He had also produced the extract of the concerned Inward Register (exhibit 238). Yet, surprisingly, the opponent has denied having seen that letter.

20) The second fact concerns the endorsements/orders recorded by the opponent on exhibits 146 and 149, dated 18.7.2001 and 24.10.2001, respectively. Exhibit 146 is an office noting dated 16.1.2001 in which the opinion of the department of Law & Judiciary was submitted to opponent, Shri. Malik's office on 24.1.2001. The following endorsement/order appears to have been made on this document by Shri. Malik on 18.7.2001.

स्थगिती उठवावी आणि सदर बाबतीतील सर्व नस्तीचे एकत्रीकरण करुन एक नस्ती तयार करण्यात यावी आणि तात्काळ सादर करावी.

A close look at exhibit 162, which is an office noting, dated 24.7.2001 and exhibit 149, which is an office noting, dated 8.10.2001 suggests that the words स्थगिती उठवावी आणि in exhibit 146 are added subsequent to 18.7.2001. Exhibit 162 was submitted in pursuance of the direction of the opponent to convene a meeting. Para 2 of this noting recites the orders of the opponent on exhibit 146, which as stated earlier, is a noting dated 18.7.2001. The recital in this noting

specifically refers to the part of the order requiring unification of all the files. However, significantly this recital does not refer to स्थगिती उठवावी, which is a part of the present order on 18.7.2001. Since exhibit 162 was prepared on 24.7.2001, in the ordinary course, it should have referred to this part of the order passed on 18.7.2001.

What occasioned the office noting dated 8.10.2001 i.e. exhibit 149, is a matter of mystery. This noting recites that it was prepared in pursuance to a suggestion given by Shri. Vyas, the then Deputy Secretary of the Housing Department. This noting gives a detailed history and refers to both the stay orders, the notice given by Advocate Shri. Suresh Mali on 7.8.2001 as also the opinion of the Department of Law & Judiciary. In the last paragraph of the noting, it is stated that मालमत्तचे पुनर्बांधणी अठरा महिन्याच्या आत पुर्ण करण्याकरीत। मा.राज्यमंत्री (गृहनिर्माण), यांनी मार्च २००१ मध्ये दिलेले स्थगिती आदेश शीथल करणे आवश्यक आहे.

Finally, this noting proposed that the stay dated 17.3.2001 be vacated. If indeed, the opponent had vacated the stay already, by his order, dated 18.7.2001, on exhibit 146 as is claimed now, the noting exhibit 149, dated 8.10.2001 would not have recited what is reproduced above.

Similarly, the words स्थगिती नाही त्वरीत कळवावे आणि.. appear to have been subsequently added to the order of the opponent dated 24.10.2001 on exhibit 149. It appears that these additions were in all probability made after the opponent learnt about the proceedings before the Lok Ayukta to create some sort of defence. Apart from this, even to the naked eye, it is clear that the words "स्थगिती उठवावी & स्थगिती नाही त्वरित कळवावे" in both the orders respectively have been added subsequently.

ISSUE NO.3 :-

21) Although it has not come on record in so many words that the letter written by Shri. More, the Under Secretary of the State Government to MHADA on 26th April, 2002 asking the MHADA to get clearance of the affidavit to be filed before the Supreme Court in the two SLPS pending before that Court, was written at the instance of the opponent, it is evident, that Shri. More, a minor functionary in the Department could not have written such a letter on his own. The authority superior to him has certainly directed him to a write the letter and the opponent as a Minister of State at the relevant time handling the present matter, cannot escape from the responsibility of the letter in question. What exactly was the purpose of this letter can only be inferred and in the circumstances the only inference

can be that the purpose was to support the erstwhile owners' stand before the Supreme Court. As has been pointed out earlier, the whole exercise indulged in by the opponent by granting the two stay orders was for the benefit of the said owners.

ISSUE NO. 4 :-

22) There is no evidence on record to suggest that Inspector Shri. Vijay Patil, in-charge of Mahim Police Station, had detained Shri. Ravi Kumar, the Deputy Engineer of MHADA, the Architect Shri. R.B. Gangar, Kalal of C.B. & Sons on 22nd December, 2000 at the instance of the opponent, although the fact that Shri. Vijay Patil had detained the three concerned persons has been established. It is possible that he has done so at the instance of the owners of the property or the tenants supporting them or of someone who can bring his influence to bear on him. This issue has, therefore, to be answered in the negative.

23) However, it is necessary to scan the evidence that has come on record with regard to the conduct of Inspector Shri.Vijay Patil.

24) The episode concerning Shri. Vijay Patil is as follows: -

"On 22.12.2000 the MHADA's contractor C.B. & Sons had started the preliminary work of construction at 10.00 a.m. At 2.30 p.m. the police interfered with the construction and stopped the contractor from proceeding with the construction and the contractor's men, namely, Wilfred D'Mello and others were taken by the police to Mahim Police station. Shri.Vijay Patil was the Police Inspector in-charge of Mahim Police Station. An ostensible purpose for which they were taken to the police station as has come in the evidence on record of Shri. Gangar (P.W. No.3) and Shri. Vijay Patil himself (P.W. No.12) was that the contractor had encroached upon the land of the owner by digging into it. They were detained there till late in the evening. As has been deposed to by Shri. Nair, when he visited the police station, after 6.00 p.m. he found Shri. Uday Desai, Harish Mehta and Raman Jadhav there chit-chatting with Shri.Vijay Patil in his room. It is not necessary to go into the details of the happenings, but Shri. Patil himself has admitted that he had stopped the construction and called the contractors' persons to the police station, as there was a complaint of encroachment on the land. Obviously, he has no authority to interfere

and the best he would have done was to refer the complaint either to the Magistrate or to the Civil Court since it was a civil dispute. Although he has stated that there was a law and order problem, it appears obviously that there is an improvement in his version before the Commission since the so-called N.C. he had registered does not mention any law and order situation there. It is obvious that Shri. Patil had interfered in the construction at the instance of Shri. Uday Desai and the owners of the property without even caring to hear either the contractor or the representatives of MHADA at whose instance the contractor had started the construction. Shri.Vijay Patil has, therefore, clearly exceeded his authority.

ISSUE NO.5: -

25) Shri. Jayant Shastri, the then Senior Inspector of Police was issued notice under section 8B of the Commission of Inquiry Act. Whether Shri. Jayant Shastri, the Senior Inspector of Police of Mahim Police Station issued notice under section 149 of the Criminal Procedure Code at the instance of the opponent has not been established. However, Shri. Shastri's action was clearly illegal since he has no power to issue such

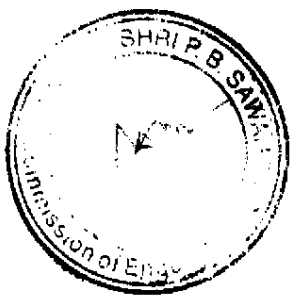
notice under section 149 of the Criminal Procedure Code. Section 149 of the Criminal Procedure Code reads as follows.

> "Section 149 of Cr.P.C. - Police to prevent cognizable offences - Every Police Officer may interpose for the purpose of preventing and, shall to the best of his ability, prevent the commission of any cognizable offence."

This section occurs in Chapter XI of the Code, which is headed as "Preventive Action of the Police". It is obvious from the provision of the section that under the first instance discretion is given to the police officer to interpose for the purpose of preventing the commission of any cognizable offence and also obligation is cast upon him to prevent the commission to the best of his ability. The section presumes that the police officer concerned has definite information about the facts, which lead into conclusion that cognizable offence is likely to be committed and the moment he knows it, he is supposed to take active step to prevent the commission of offence. His duty does not stop at merely cautioning the person concerned and that too by written communication from committing the offence. He has himself to act by adopting the requisite preventive measures in order that the commission of the offence is nipped in the bud. This duty cast upon him cannot be discharged by the police

officer by merely pointing out to the prospective offenders that they are likely to commit such an offence which will create law and order situation and by telling them that they will alone be responsible for the consequence of their action and this is what Shri.Shasti has done by issuing notice in question (exhibit 57). What is worse is that Shri. Shastri had issued notice to Shri. Paliwal, the Executive Engineer of MHADA, that is, to a responsible officer of a statutory body. The so-called offence which Shri.Shastri had apprehended at the hands of Shri. Paliwal was the commencement of the construction in the property in question which was duly approved of, by the authorities concerned. The contents of the notice show that Shri.Shastri was made fully aware by someone of the details of the said construction. He knew for example that there was a dispute with regard to the construction in the property and that the Court had issued directions from time to time in that behalf. He also knew that there was a committee appointed under the Chairmanship of the Collector which had shown the difference in the area in possession of the owner and of the MHADA and yet he has taken upon himself to direct Shri.Paliwal to get the difference corrected and the notification to that effect issued. He has further directed that thereafter the procedure should be

followed to take possession of the increased area and thereafter the plans should be got prepared from the Bombay Municipal Corporation and also that all other legal formalities be concluded before the construction is started. It is obvious that these details are supplied to Shri. Shastri by the erstwhile owners of the property or the tenants who were supporting the owners of the property and opposing the construction by the MHADA. The notice is thus obviously issued by Shri.Shastri at the instance of the said interested parties. Even assuming that he had any such power to issue the same, before issuing the notice, he had not cared to contact the responsible officer of MHADA, namely, Shri. Paliwal to whom he had chosen to issue the same. Not only Shri. Shastri had exercised the powers which were not vested in him, but had obviously acted to favour the owner and/or the tenants as against the MHADA. What is worst, is that Shri. Paliwal himself had on 13.12.2000 addressed a letter (exhibit 47) to the Senior Inspector of Police, Mahim Police Station i.e. Shri. Shastri himself, pointing out the history of the dispute and the Court's Order in favour of MHADA, and that the MHADA was going to start the construction according to the order of the Court and had also sought police protection for the construction. Hence, Shri. Shastri knew that the Court's order



was in favour of MHADA and the construction was to start in pursuance of the Court's order. Shri.Shastri, therefore, was guilty of two unlawful actions. One, he had defied the order of the Court by asking Shri. Paliwal to go through certain formalities before starting the construction which was the subject falling within the jurisdiction of the Court. The Court, when it issued the order permitting the MHADA to proceed with the construction, should be deemed to have taken into consideration all the formalities which Shri. Shastri wanted Shri.Paliwal to comply before commencing the construction. Shri.Shastri had also committed contempt of court thereby. Secondly, as has been stated earlier, it was not the business of Shri.Shastri to ask Shri.Paliwal to comply with the said formalities, and he had no power to issue the notice under section 149 of the Criminal Procedure Code. Thirdly, when Shri.Paliwal on behalf of MHADA had asked for the protection to proceed with the construction in pursuance of the order of the Court, instead of giving the protection, he was telling Shri. Paliwal that he would be held responsible for the consequences of his action and an action will be taken against him if law and order problem was created on account of the construction. It was not only a blatantly illegal act on his part but was also a

challenge thrown by him to the law and to the order of the Court. Apart from the fact that he was clearly guilty of the obvious remission in his duties, as has been pointed out earlier. The circumstances clearly indicate that Shri. Shastri was acting in the most bias and partisan manner at the instance of the owner and/or the interested tenants. What was the consideration which impelled him to do so, is not for us to investigate. The police is often found remiss in doing their legal duties, when a police officer by going out of his way to oblige someone by exceeding his authority and indulging in clear illegal actions, it would not be unjustifiable to infer that the action is motivated by some illegitimate considerations. According to us, therefore, Shri.Shastri's conduct requires investigation by the authorities concerned and the action taken against him made an example for others.

26) Under section 8B of the Commission of Inquiry Act, 1952, a notice was also issued to Shri.Chandrakant Khaire, who was the erstwhile Cabinet Minister for Housing in the coalition Ministry of Shiv Sena and Bharatiya Janta Party. It became necessary to issue the said notice because the opponent tried to defend his action of handing over the property for reconstruction to the erstwhile owners on the ground that there

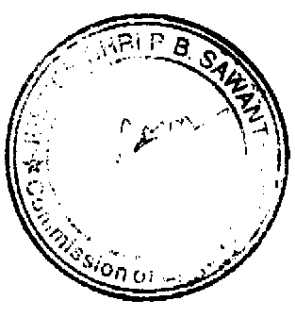
was a precedent for the same. According to the opponent, the precedent was created by Shri. Khaire, when he was a Cabinet Minister, by his order dated 11.8.1995 passed on exhibit 103, which was an application made in respect of the present property dated 5.7.1995, by Shri. Hemendra Mehta, a Member of Legislative Assembly belonging to Bharatiya Janta Party, which is as follows.

"प्रस्तुत प्रकणात मालक व भाडेकरुंना म्हाडा अधिनियमानुसार इमारतीची संरचनात्मक दुरुस्ती व पुर्नबांधणी करीता परतावा सहीत (with reimbursement) ना हरकत प्रमाणपत्र त्वरीत निर्गमित करावे व भू-अर्जनाची कार्यवाही रद्द करावी व याबाबत अहवाल सात दिवसाचे आत सादर करावा. "

"In the present case the No Objection Certificate be issued immediately to the tenants and the owners for repairs and construction with reimbursement and the acquisition of the land should be cancelled and a report of the same should be submitted within seven days."

Admittedly, the present property was acquired and the acquisition proceedings were completed in the year 1990. The challenge to the said acquisition was turned down by the High Court on 4.8.1994. It is thereafter on 5.7.1995 that Shri. Hemendra Mehta, Member of Legislative Assembly, belonging to the Bharatiya Janta Party, which was a coalition partner in the

then State Government with Shiv Sena, to which Shri.Chandrakant Khaire belonged, made the application in question (exhibit 103). In the application Shri.Mehta had requested Shri.Chandrakant Khaire to direct MHADA to issue "No Objection Certificate" for reconstruction and repairs by the erstwhile owners and tenants. There was no application made for the deacquisition of the land in question. It is thereafter on 5.7.1995 that Shri.Hemendra Mehta had relied upon the policy of 1984-85 of the State Government to permit reconstruction and repairs by the tenants and the owners themselves on certain conditions. However, it must be noted that policies do not relate to the property which was acquired by MHADA specifically for reconstruction and repairs. Secondly, as has been pointed out earlier when the property is so acquired by MHADA it has to be reconstructed and repaired by MHADA itself. Thirdly, there is no question of the property already acquired of being deacquired and returned to the owner. There is neither a provision for such deacquisition in the MHADA Act nor in the Land Acquisition Act. Not only there is no question of deacquisition but also there is no provision for reimbursement as the Minister Shri. Chandrakant Khaire was generous enough to order. The order thus was illegal and obviously beyond the



authority of the Minister. In his examination (exhibit 243) before the Commission Shri.Chandrakant Khaire himself could not say whether the order he had passed was within the provisions of the MHADA Act. He also agreed that the so-called 1984-85 policy if not consistent with the provisions of the Act, could not be implemented. He also agreed that according to his information on the day of his examination, he could not say whether that policy could fit in the provisions of the MHADA Act. He further admitted that he could not say whether the order passed by him was proper or improper. On the other hand, he has admitted that MHADA has to construct on the land which MHADA has acquired for the purpose and that the Government's policy has to be consistent with the provisions of the Statute.

In his further order passed on the subject on 7.3.1996 (exhibit 245) he has given two spacious reasons to justify his earlier Order which are both incorrect. He has also stated that 16 years long period has elapsed and yet on account of paucity of funds and other reasons, it did not become possible for the MHADA to rebuilt the property. In the first instance, the property was acquired in 1990 and till then only six years has elapsed. This he had admitted in his deposition. Further, he has also admitted in his deposition that he had not

cared to find out what was the cost of the reconstruction and whether MHADA had sufficient funds. He has also admitted that at the relevant time MHADA had apportioned one and half crores of rupees for construction of the said property but he was not aware of the same. Thus, he had passed the order casually without even trying to verify the facts of the case. Secondly, when he passed the order of reimbursement, it is not clear as to who was to be reimbursed; the tenants or the owners and for what purpose. Shri.Chandrakant Khaire has thus shown a very superficial application of mind while passing the order in question.

In the light of what we have discussed above, it is clear that Shri.Chandrakant Khaire as a Cabinet Minister had not only acted illegally in passing the order on exhibit 103, dated 11.8.1995, but also had gone out of his way in passing the order. It is obvious that he has done this to oblige the Member of Legislative Assembly belonging to the coalition partner of the then Government and had even gone to the extent of granting a favour which was not asked for in the application made by the Member of Legislative Assembly to order deacquisition of the land that too with reimbursement. This action on the part of Shri.Chandrakant Khaire was not in keeping with the precautions

which he was supposed to take while discharging his public duties and, therefore, was certainly not consistent with his responsibilities as the Minister of the Government.

ISSUE NO.6: -

27) In view of what we have discussed above, it is clear that the Minister Shri. Nawab Malik had passed the two stay orders preventing the MHADA from reconstructing the property with a view to oblige M/s. Galaxy Builders and their attorneys M/s. Raj Doshi Export Private Limited and his party activists Shri.Uday Desai, who was leading the tenants supporting M/s. Galaxy Builders and Raj Doshi Export Private Limited. There is no other conclusion possible that the opponent has in terms as pointed out, admitted that he had called the fist meeting on 4th September, 2000 at the instance of his Party General Secretary, Shri.Gurunath Kulkarni, and to oblige Shri.Uday Desai. In that meeting among others the representative of Raj Doshi Export Private Limited Shri. Uday Desai and the tenants led by him, Shri.Hemendra Mehta, who was supporting the cause of M/s. Raj Doshi Export Private Limited, were present. Although in this meeting he had directed the tenants to get the order of the High Court modified, he again called another meeting on 29.9.2000 at the instance of Shri.Gurunath Kulkarni and

Shri.Uday Desai and stayed the construction for which MHADA had issued work order to its contractor on 13.9.2000. Although the High Court had dismissed the application of the tenants to reconsider the order on 2.12.2000, again on 15.2.2001 he passed the second order staying the construction which was communicated by Shri.More to MHADA on 17.3.2001. The reasons given by him in support of both the orders are clearly untenable. As discussed earlier the purpose of both the orders were to obstruct MHADA from reconstructing the property and facilitate the reconstruction by the earlier owners. The opponent tried to defend the construction by the earlier owners by relying upon the so-called policy of the Government of the year 1984-85. The said orders passed by him were thus innocuous but with the sole purpose of handing back the construction to the owners. The only conclusion, therefore, possible is that the intention of the opponent was to oblige the erstwhile owners of the property and to enable them to reconstruct the same. The issue is, therefore, answered in the affirmative.

CONCLUSIONS:-

The aforesaid discussion shows that Shri. Nawab Malik had defied the order of the High Court and had passed his own orders of stay of the construction on the said property. He had done so to oblige the erstwhile owners of the said property and the tenants supporting them and also to oblige his party bosses. He is thus guilty of a corrupt practice.

Place: Pune

Date: 22nd February, 2005

[Justice P.B.Sawant (Retd.)]
Commission of Inquiry

CHAPTER VI

ALLEGATIONS AGAINST DR. SHRI. VIJAYKUMAR GAVIT

CHAPTER VI

ALLEGATIONS AGAINST DR. VIJAYKUMAR GAVIT

The Government by its Notification, dated 1.9.2003 had made a reference to the Commission, so far as Dr. Vijaykumar Gavit, the then Minister of State, General Administration, Information and Public Relations, as follows:-

"The alleged corrupt practices and maladministration by Dr. Vijaykumar Gavit, Minister of State (General Administration), in the matter of irregularities found in the Sanjay Gandhi Niradhar Yojana, Indira Awas Yojana and Indira Gandhi Rashtriya Vridhapkalin Yojana in District Nandurbar."

2) It is necessary to mention at the outset, that there was no reference with regard to the irregularities in the allotment of the government quarters. The Commission makes this clear in the beginning, because the Charter of Allegations, filed by Shri. Anna Hajare before the Commission, refers to the said irregularities.

3) Secondly, it is also necessary to clarify the confusion, which has arisen because the reference mentions

Indira Gandhi Rashtriya Virdhapkalin Yojana, by which name no scheme exists. The reference, admittedly, purports to name the "Rashtriya Vridhapkal Nivruti Vetan Yojana". Therefore, the discussion that follows refers to the latter named scheme and not the scheme named in the terms of the reference. We will, therefore, here deal with the following schemes in the order they are listed below.

(a) Sanjay Gandhi Niradhar Yojana (hereinafter referred to as the Niradhar Yojana).

(b) Indira Gandhi Avas Yojana (hereinafter referred to as the Avas Yojana).

(c) Rashtriya Vridhapkal Nivruti Vetan Yojana (hereinafter referred to as the Pension Yojana).

4) The foundation of all the allegations against Dr.Gavit is that he was the Chairman of the Nandurbar Taluka Committee, which was looking after the Niradhar Yojana, the Pension Yojana and one another Scheme viz. Indira Gandhi Vridha Bhoomihin Shet Majoor Yojana (Bhoomihin Shet Majoor Yojana). Out of that, the third Scheme is not even the subject matter of the reference since it has not been referred to anywhere in the reference. As regards the Indira Awas Yojana, which is named in the reference, admittedly it was not within

the jurisdiction of the Nandurbar Taluka Committee nor is any evidence led on behalf of Shri. Hajare with regard to the said Yojana. There is, therefore, no need to refer to and discuss the said Yojana in this report. We have to discuss only the two schemes, namely, the Niradhar Yojana and the Pension Yojana.

5) The Charter of Allegations submitted on behalf of Shri. Hajare does not make separate and specific allegations in respect of the irregularities/illegalities in each of the two schemes. The allegations levelled, are jointly against both the schemes together, and they will, therefore, have to be dealt with in the light of the evidence, which has come on record and not according to the Charter of Allegations.

6) The allegations in the Charter of Allegations with respect to these two schemes are as follows:-

(i) Dr.Gavit enlisted the persons for the benefit of the scheme, to favour them.

(ii) Dr.Gavit's brother Shri.Sharad Gavit charged Rs.50/- per person for photographs with an assurance that they would get benefit under the scheme.

(iii) Dr.Gavit and his brother collected the proof of the age of the beneficiaries and other documents relating to the beneficiaries, and prepared a bogus list.

(iv) The said proofs of the age were altered/forged for making the persons concerned eligible under the schemes, though they were under-age.

(v) The benefits were given to some persons without their applications, and in some cases there were no signatures of the applicants on the application.

(vi) The eligibility norms were not followed while granting benefits to them resulting in a large-scale fraud/scam.

(vii) The eligible applicants were sidetracked and the ineligible persons were given the benefits.

(viii) Dr.Gavit and his brother siphoned off all the benefits by intercepting them before they reached the beneficiaries.

7) The points which arose on the basis of the above allegations and the evidence led to prove them, are dealt with as follows:-

(i) Is it proved that the opponent got himself appointed as a Chairman of the two welfare schemes of the Central Government, namely, (a) Sanjay Gandhi Niradhar Yojana and (b) Rashtriya Vridhapkalin Vetan Yojana, vide an order of the Collector of Nandurbar, dated 13.4.2000

arbitrarily, illegally and under pressure, by using his position as a Minister of State, General Administration?

(ii) Is it further proved that the opponent similarly got his brother Shri.Sharad Krishnarao Gavit appointed on the said committees as a member?

(iii) Is it proved that the opponent with the help of his said brother and the concerned office bearers, like Tehsildar, Block Development Officer, Medical Officer etc. indulged in corrupt practices in and maladministration of the said two Schemes by resorting to,

(a) the preparation of bogus lists of beneficiaries by creating false documents and sidetracking the eligible beneficiaries,

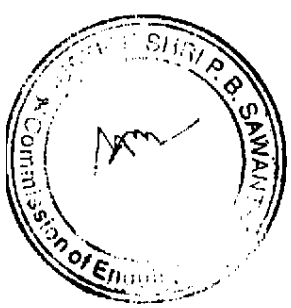
(b) charging Rs.50/- per person by assuring the concerned persons that they will be given the benefit of the Schemes,

(c) the siphoning off the funds meant for the beneficiaries of the Scheme, by approaching the concerned postman and encashing the money order.

8) Coming now to the first point, namely, whether Dr.Gavit got himself appointed as the Chairman of the

Nandurbar Taluka Committee, it is obvious that this allegation is made out of ignorance. By virtue of the Government Resolution, dated 2.5.1983, the local Member of the Legislative Assembly (MLA) is an ex-officio Chairman of such Taluka Committees. It is not disputed that Dr.Gavit was the local M.L.A. of the Nandurbar Taluka from 14.3.1995 till October, 1999 and then from 7.10.1999 till September, 2004. It was not, therefore, that any special efforts made by Dr.Gavit, made him the Chairman of the Nandurbar Taluka Committee. He became its ex-officio Chairman for the first time on 24.1.1996. This allegation, therefore, is baseless and does not merit any consideration.

9) The second point, whether Dr.Gavit got his brother Shri. Sharad Gavit appointed as a member of the Committee has no basis in facts. The procedure for appointment of the non-government members on such Committees is that it is the Guardian Minister of the District, who makes recommendations of the appointees, to the Collector, and it is the Collector, who thereafter appoints them as members of the Committee. What role Dr.Gavit played in getting his brother recommended from the Guardian Minister to the Collector, has not been brought on record. In the absence of the evidence, it is not possible to accept the said allegation. Beyond making a bald statement that



Dr.Gavit got his brother appointed on the Committee, neither the allegation makes any elaboration on the point nor has any evidence been led to connect Dr.Gavit with the said appointment. It has to be remembered in this connection that when Shri. Sharad Gavit was appointed as a member of the Committee, Dr.Gavit was not a minister. The next thing that needs to be noted is that Dr. Gavit and Shri. Sharad Gavit belong to a tribal community. There are very few educated persons belonging to the said community. The Nandurbar Taluka has a substantial population of the tribal community and the majority of the beneficiaries of the said welfare schemes come from the said community. That these facts may have weighed on the mind of the Guardian Minister while making Shri. Sharad Gavit's recommendation for the membership of the committee, cannot be ruled out. The membership of the committee does not carry any monetary benefit. It is purely an honorary office.

A) <u>NIRADHAR YOJANA</u>

10) The following criteria were laid down for the eligibility under the Niradhar Yojana. If a male, he has to be 65 years of age and above, and if a female, she has to be 60 years of age and above. Secondly, the person should not have any one to support him or her, nor should he/she have any source of

income, including any land. Neither the area of the land nor income from the land was specified for disqualification. If a female were a widow or if a person were disabled, whatever their age, they were also qualified for the benefit under the Scheme. The benefit was Rs.250/- per month. The person had to apply in the prescribed form and submit alongwith the application the following documents, namely, (i) the proof of his/her age, (ii) a certificate that the person concerned had neither income nor property, and that there was no one to support him or her, (iii) certificate of domicile of 15 years and (iv) if the person is disabled, a medical certificate to that effect.

11) Although, in the charter of allegations, it is alleged that the eligible persons did not get the benefit of the scheme, no evidence has been led whatsoever to prove it. The report of the specially appointed High Power Committee headed by the then Divisional Commissioner, Shri. Mathankar, and the then Deputy Director, Shri. Rathod, hereinafter referred to as the Mathankar Report, does not cite a single instance of any eligible person not getting the benefit under the scheme. We may, therefore, deal with the other allegation, namely, that the ineligible persons were granted benefit under the scheme.

12) In order to appreciate the contentions of both sides in this behalf, it is necessary to explain the procedure, which was followed while granting the benefits to the applicants. The applicant either made the application directly to the Tehsildar of Nandurbar Taluka, or sent it to him through the Talathi or Gramsevak of his village. These applications were scrutinised by the office of the Tehsildar, and kept before the meeting of the Committee after such scrutiny. For this purpose, a separate cell had been created in the office of the Tehsildar. The meetings of the Committee were held every month to dispose of these applications. According to the evidence, which has come on record, it appears that in each meeting a number of applications were kept for consideration with the recommendations of the Tehsildar wherever the applicant was eligible. According to the then Tehsildar, Shri. Walvi, (Witness No.5) (Page 3, Para 6), he did not keep before the Committee any application of the applicants who were considered ineligible by him. According to Dr.Gavit, (Witness No.10), the Tehsildar used to keep before the Committee meeting all the applications received by him, including of those who were not eligible. The committee consisted of Dr.Gavit, six non-government officers and two government members, namely, the Tehsildar and the

Block Development Officer (BDO). According to Dr.Gavit, they would scrutinise the applications only with regard to two points, namely, the age of the applicant, and whether he/she was dependent on others or not (Niradhar). The applications which were sanctioned bore the word "Manjoor" on it with his signature below it. The other applications were merely signed in token of the fact that they were kept before the Committee. He admitted that the minutes of the meetings were sometimes written on the same day, while most of the times, they were placed in the next meeting, for ratification. The minutes were written by the Tehsildar's office and signed by the Tehsildar. He admitted that there was a scope for manipulation of the minutes in such a procedure, and the manipulation could be made either by the Tehsildar or those who wrote the minutes. In the meetings, these minutes were not checked in detail, and the members of the Committee, including Dr. Gavit himself, trusted the Tehsildar to write the minutes faithfully. As a Chairman, he only asked the Tehsildar whether the minutes were correctly written, and then signed them.

13) Dr. Gavit has stated in his deposition that there was no instance during his tenure, of any ineligible person being given the benefit. When he was confronted with the instances of

such persons in the Mathankar Report, he stated that these instances were not brought to the notice of the committee. Had it been done, they would have taken the necessary action to recover the amounts from such ineligible persons. It is necessary to note here that as Shri. Mathankar himself has admitted, the High Power Committee had neither asked the members of the Taluka Committee in respect of such instances, nor had it even confronted the "ineligible" persons with regard to their ineligibility. In fact, as Shri. Mathankar has admitted, the members of the High Power Committee had not themselves gone round to collect the data presented in the report. It was their subordinates who had done that work. According to him, in each case the panchanama was drawn with the local persons attesting as the panchas. Where the person concerned was alleged to have a supporter, the supporter was not questioned about it. So also, where it is stated in the report that the person concerned had any land in his/her name or in the name of any member of his/her family, no verification was made either of the income from such land or of the area of such land, or whether the person concerned was actually receiving any share in such income. They had also not verified the quality of the land allegedly possessed by the beneficiaries. It is on the basis

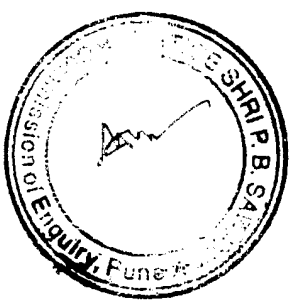
of such investigation, that the Mathankar report had pointed out that some ineligible persons had received the benefit under the scheme. As regards those who were named in the report as ineligible on account of their under-age, admittedly no scientific tests were carried out. Where there was no birth certificate, they depended on the "face" test or on the opinion of the medical officer other than the one who had issued the age certificate and who had similar qualifications or no better qualifications. This is stated by Dr.Rathod, who was the other member of the High Power Committee.

14) Dr.Rathod's deposition in that behalf is worth quoting here. He has stated "while examining the age, if the person concerned has brought a documentary proof with regard to the age, that is considered. Where, however, no such documentary proof is available, the age is determined by looking at the overall physical state of the individual. There is likelihood of difference to the extent of 10 years in such estimates. The medical team (which assisted the committee) had carried out the test of the individual with regard to their age, according to this system. No other tests were carried out. After 40 to 45 years of age the ossification tests are not useful due to fusion of the bones at that age."

15) It may be mentioned here that the maximum number of beneficiaries who were held ineligible by the Mathankar Report to receive the benefits, were on account of their age-disqualification. It is well-known that people coming from different regions and climatic conditions, different family backgrounds and economic conditions, may look of different ages, though of the same age. In view of these circumstances, the persons who were held ineligible by the Mathankar Committee, on account of their age cannot be said to be so ineligible with any amount of certitude, and hence neither Dr.Gavit nor the Taluka Committee can be faulted convincingly. The allegations against Dr.Gavit in that behalf, therefore, cannot be upheld, on the basis of the evidence that has come on record.

B) **PENSION YOJANA**

16) As regards the Pension Yojana, excepting the age, all other qualifications were the same as under the Niradhar Yojana. To be eligible for pension under it, both male and female beneficiaries had to be of 65 years or more. The Mathankar Report on the basis of which alone the relevant allegations are made against Dr. Gavit, has dealt with the so-called ineligible beneficiaries under this Yojana, in the same



manner as it has done with the beneficiaries under the Niradhar Yojana. We have discussed all the said aspects of the so-called age disqualification while discussing the Niradhar Yojana. The allegations against the so-called ineligible beneficiaries under this scheme suffer from the same deficiencies and weaknesses as they do under the Niradhar Yojana. It is not necessary to repeat the said discussion here. Hence, we do not find any substance in the allegations against Dr.Gavit that ineligible persons were given the benefit of the Yojana.

C) **PREPARATION OF BOGUS LIST OF BENEFICIARIES**

17) No evidence has been led to prove this allegation and not a single instance of an admittedly ineligible person receiving the benefit, has been cited.

D) **CHARGING RS.50/- FOR PHOTOGRAPH**

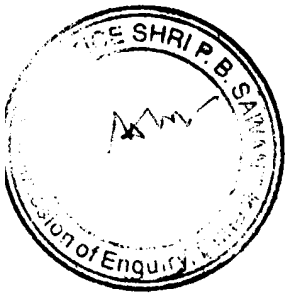
18) Similar is the case with this allegation. The allegation seems to have been made wantonly.

E) **SIPHONING OF THE BENEFITS BY INTERCEPTING THEM**

19) This is yet another allegation without any basis. No complaint of any beneficiary, who had not received benefit due to him has either been produced or any such beneficiary has been examined. It has to be remembered that the benefits

under the scheme are monetary and are sent to the beneficiaries by money order every month. For intercepting the money orders, the postman has to join the conspiracy. The applicant has made this allegation obviously on the basis of the information given to him by some one. It is clear that the applicant had not examined any person before making the allegation, else he would have examined atleast one of them before the Commission. No explanation has been given by the applicant for not examining any witness to prove this and the earlier charges.

20) Having said so, it has to be recorded that the procedure adopted by the Taluka Committee while sanctioning the benefits under both the said Yojanas, need to have a fresh look. The Committee must consist of members who can devote themselves whole-heartedly to their work. The members of the committee cannot depend on the bureaucratic machinery either for scrutinising the applications and selecting the beneficiaries or for disbursing the benefits. They must personally look into each case right from the stage of the receipt of the applications to the stage of the reaching of the benefits to the eligible persons. As has transpired in the evidence in the present case, according to Shri. Valvi, the suspended Tehsildar, he was not

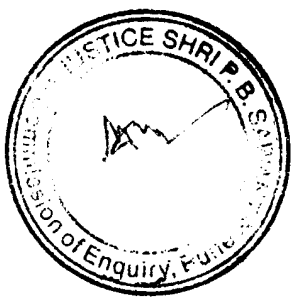


keeping all the applications before the committee, although Dr.Gavit has stated to the contrary. On this aspect of the matter, we will rather go by the evidence of the Tehsildar. Admittedly, Dr.Gavit was not scrutinising the applications received in the Tehsildar's Office nor did he ever verify whether they were all kept before the Committee. If Shri. Valvi is to be believed, virtually the entire work with regard to the implementation of the schemes was concentrated in the hands of the Tehsildar and his staff. Hence, which applications would come before the committee, which applicants were eligible or ineligible, and who would get the benefit, not only depended upon the so-called scrutiny made by the Tehsildar and his office, but also on the names of the beneficiaries written in the minutes of the meetings of the committee. The minutes in the present case were, admittedly, written by a clerk in the Tehsildar's office. There was hardly any method adopted for verifying whether the minutes written were according to what had actually transpired in the meeting. There was thus a good deal of scope for manipulation and corruption at the clerical level. In the present case, it has come on record that Shri. Valvi, the Tehildar himself and others were suspended on the basis of the report given by the Special Divisional Officer prior

to the Mathankar Report, and disciplinary actions were initiated against them. They are also facing criminal prosecution on the same charges. The public funds are spent in crores of rupees on such schemes, but on account of the corruption, the slackness and inefficiency of the bureaucracy, the benefits of such schemes hardly reach those for whom they are meant. It is necessary that the Government take the necessary steps to manage the schemes efficiently by rehauling the machinery in charge, from the grass-root level upwards. The non-governmental personnel inducted as members on the Committees have, in this respect, a greater responsibility. They have been made members precisely for ensuring the participation of the citizens in the schemes. However, it appears that they are either not equipped with the requisite knowledge and skill for the implementation of the schemes or they are indifferent to their duties. Dr.Gavit has, himself admitted, that he realised about the lacunae in the implementation of the schemes, for the first time while in the witness box. It is not enough that a man in public life is honest. He has to be alert all the while so that the public-work entrusted to his care or voluntarily accepted by him, is carried out promptly, honestly and efficiently, at all its stages.

Unfortunately, there is hardly ever an effort is made in this country to impart the requisite knowledge and skill to the persons who have to discharge such responsibilities, with the result that many times, the bureaucracy has a field day.

21) The next thing that has come to the notice in this matter is the totally indefensible practice of a person continuing to be the Chairman of the Taluka Committee, even after he is appointed a Minister of the Government. The Government Resolution, dated 12.9.1983 (exhibit 54) lays down the procedure to be followed when the M.L.A. of the Taluka is appointed as a Minister. It states that in such case, the Minister so appointed may nominate a local person considered suitable by him to act as the Chairman of the Committee. Dr. Gavit was not aware, and was according to him, not made aware, of the said Government Resolution with the result that he continued to be the Chairman of the Taluka Committee, which had to work under the Collector of the district. A very odd situation indeed! And this anomalous state of affairs continued till date. This has only brought to the fore administrative illiteracy on the part of the concerned persons.



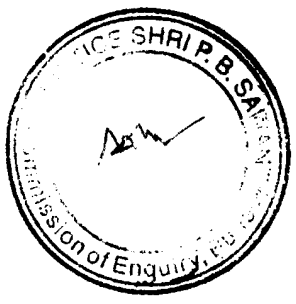
CONCLUSIONS :-

Dr.Gavit was not exercising the required supervision over the staff working under him for implementing the schemes. He was relying exclusively on Mamlatdar and his staff for scrutinising the applications received for relief, for keeping the said applications before the meetings of the Committee and for writing the minutes of the meeting and for certifying their veracity. That left ample scope for the staff, to manipulate the matters, if they so willed. Although, therefore, no corrupt motive can be attributed to Dr.Gavit and no instance of corruption has been pointed out against him, he cannot escape the charge that there was practically no supervision by him, over the actual implementation of the schemes and, therefore, was guilty of maladministration to that extent.

Place: Pune

Date: 22nd February, 2005

[Justice P.B.Sawant (Retd.)]
Commission of Inquiry



CHAPTER VII

ALLEGATIONS AGAINST SHRI. ANNA HAJARE

CHAPTER VII

THE ALLEGATIONS AGAINST SHRI. ANNA HAJARE

The notification dated 1.9.2003 by which the present Commission was appointed, had in Annexture B specified the matters to be inquired by the Commission against Shri. Anna Hajare. The matters were specified in entries 1 to 10, and they are the alleged corrupt practices and maladministration in the following institutions:-

i) Hind Swaraj Trust, Pune;

ii) Sant Yadhavbaba Shikshan Prasarak Mandal, Ralegan-Siddhi;

iii) Bhrashtachar Virodhi Jana Andolan, Ralegan-Siddhi;

iv) Parner Taluka Shikshan Prasarak Mandal, Ralegan-Siddhi;

v) World Water Institute, Pune;

vi) Sainik Bank-Parner Taluka Sainik Sahakari Bank Ltd., Parner, District Ahmednagar;

vii) Adarsh Gramin Patsansatha, Ralegan-Siddhi;

viii) Krishna Pani Puravtha Yojana Sahakari Sanstha, Ralegan-Siddhi;

ix) Swami Anna Hazare Trust, Relegan-Siddhi; and

x) Swami Vivekanand Krutadnyata Nidhi, Relegan-Siddhi.

2) Out of these 10 institutions, the allegations of maladministration and corruption were not pressed by Shri. Suresh Jain, the applicant, after inspection of the documents, against the four institutes, namely, World Water Institute, Pune; Swami Anna Hazare Trust, Ralegan-Siddhi, Swami Vivekanand Krutadnyata Nidhi, Ralegan-Siddhi and Sainik Bank-Parner Taluka Sainik Sahakari Bank Ltd.,Parner. Similarly, Shri. Wadekar, the counsel for Shri. Jain, submitted to the Commission that he will not lead any evidence with regard to the Parner Taluka Shikshan Prasarak Mandal, Ralegan-Sididhi and will rely only on the allegations made by them and the reply given to them by that institute in his arguments. As regards the Adarsh Gramin Patasansatha, Ralegan-Siddhi, Shri. Wadekar stated that he would rely only on the Government Auditor's Reports for 3 years, namely, 2000 to 2003 in respect of the

allegations against the said institution and the institute's compliance report of the same, and no oral evidence would be led. He also stated that he will also not rely upon what was stated by the applicant, Shri. Jain, in his affidavit against that institute. Shri. Paralikar, the counsel for Shri. Hajare, stated that he will also not lead any oral evidence and will depend upon the Government Auditor's Reports and the institute's compliance report. No written submissions were made in respect of both these institutes, namely, Adarsh Gramin Patsanssatha, Ralegan-Siddhi and Parner Taluka Shikshan Prasarak Mandal, Ralegan-Siddhi, nor was any oral submission made in respect of them on behalf of Shri. Suresh Jain.

3) Thus, we have to deal in this report only with the allegations of the maladministration and corruption in four institutes, namely, Hind Swaraj Trust, Pune, Sant Yadhavbaba Shikshan Prasarak Mandal, Ralegan-Siddhi, Bhrashtachar Virodhi Jana Andalon, Ralegan-Siiddhi and Krishna Pani Puravatha Yojana Sahakari Sansatha,Ralegan-Siddhi, referred to in the terms of reference.

A) **HIND SWARAJ TRUST**

4) This Trust was established in the year 1995. The main objects of the Trust as per its Trust Deed (exhibit 30) are:

(i) To develop villages and rural area, economically and ecologically;

(ii) To impart education - academic, scientific and moral.

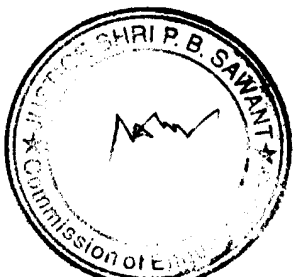
5) According to the Trust Deed, the number of trustees were not to be less than 2 and not more than 9. Initially, there were five trustees, and Shri.N.K. Firodia was its president. Shri.Hajare became its president later and was the president at the relevant time, with which we are concerned.

6) The following allegations were made in respect of this institute:-

i) Shri. Hajare had received grant from the Government even before the Trust was registered, and the expenditure from the grant was made for the purposes other than those for which the grant was sanctioned;

ii) The unspent grants were transferred to the corpus of the trust unauthorisedly;

iii) The price of the land purchased by the trust was not shown in the accounts of the trust;



iv) The part of the land belonging to the Trust was given to the Zilla Parishad, Ahmednagar, without the sanction of the Charity Commissioner;

v) The funds belonging to the trust were spent on the celebration of the 60th Birthday of Shri. Hajare;

vi) The Drip Irrigation Set belonging to the Yadav Baba Trust was shown to have been purchased by this trust for Rs.60,000/- but in the accounts of the Yadav Baba Trust, the sale price of the same was shown to be the donation received from this trust;

vii) Negative cash balance was shown on some occasions in the accounts of the trust;

viii) The expenses incurred for the calls made by Shri. Hajare on his mobile phone were debited to the accounts of the trust.

7) We will deal with each of these allegations in the order, in which they are enumerated above.

8) As regards the first allegation, namely, that the trust had received grant before it's registration, the facts which have come on record show that the trust was established on 8.2.1995 and was registered on 6.4.1995. Although, the cheque for the grant given to the trust was dated 31.3.1995, it was

deposited in the trust's bank account only after the trust was registered on 6.4.1995. It appears that the Central Government had issued the said cheque with 31.3.1995 as the date on it to account for the amount of the cheque as an expense for the year 1994-95, otherwise the funds for expenses for that year would have lapsed. The contention of the applicant that Shri. Munot, one of the trustees of the trust had not disclosed the receipt of the said cheque of Rs.45 lacs from the Central Government to the Charity Commissioner in the affidavit filed before the Charity Commissioner, is meaningless for the simple reason that the relevant affidavit was filed on 21.2.1995 (pages 34 to 37 of exhibit 5) at the time of making the application for the registration of the trust. The trust came to be registered, as stated above, on 6.4.1995. There was no cheque from the Central Government in existence on 21.2.1995. When the trust applied for registration on 21.2.1995, the trust had only Rs.500/- as its corpus. The affidavit filed was, therefore correct and the allegation is meaningless.

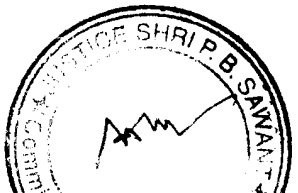
9) The second allegation in this connection was that the grant received from the Central Government was not properly utilised. In the first instance, the applicant has failed to show what part of the grant was mis-utilised or improperly

utilised. The only thing he has succeeded in proving is that the trust had in addition to the receipt of the grant from the Central Government, charged the trainees the fees, and for the years ended on 31.3.2001 and 31.3.2002 the fees so collected from the trainees amounted to Rs.10,32,612/- and Rs.8,80,845/- , respectively. The contention is that these amounts ought to have been sent to the Central Government since the grant was also for the fees of the trainees. In the first instance, the terms on which the Central Government gave the grant for the Training Centre does not contain any such condition. On the other hand, clause 7 of the agreement (exhibit 13) with the Central Government in that behalf, clearly permits the trust to charge fees to the trainees towards their training costs. There is no grievance that the accounts of the Training Centre were not sent to the Central Government, which showed as to how the grant received from the Central Government was utilised by the trust. There is also no query received by the trust from the Central Government as to whether the Training Centre had on hand as surplus, any amount from the Central Government grant at the end of the year. There is further no demand from the Central Government to pay the surplus amount to them. There is, therefore, no substance in this allegation. It must further be

remembered that whatever had remained as surplus with the trust, has been shown in it's accounts, and there is no allegation that any amount from the surplus was either misappropriated or mis-utilised. We are concerned here with the allegation of maladministration and corruption in the trust and there is no whisper about them in the contention raised as above.

10) The next allegation of the applicant is that the amount of the grant of Rs.65.85 lacs received from the State Government for the Adarsh Gaon Yojana was not utilised as per the government-conditions. This contention is only partially true. It has to be remembered in this connection that the Government Resolution by which the said grant was sanctioned for the Adarsh Gaon Yojana, does not lay down item-wise expenses to be incurred by the trust. The only condition imposed, as per the resolution is that the total expenditure should not exceed the said amount of Rs.65.85 lacs. The reliance placed on behalf of the applicant on document exhibit 15 in that behalf is misconceived. Exhibit 15 consists of 2 parts. One part is of the utilisation certificate issued by the auditor in respect of the said grant. The other part consists of (i) the summary of the expenses incurred on different items and (ii) the estimate prepared by the Yadav Baba Trust at the time of

sending the proposal for the grant. It has to be remembered in this connection that Yadav Baba Trust was originally handling this scheme, which came subsequently to be transferred to the present trust. The summary is not part of the utilisation certificate. That summary shows that on several items, expenses have been incurred much below the expenses estimated originally. Only on one item, namely, the printed pamphlets of the scheme, the original estimate was Rs.1,00,000/- and the actual expenses incurred of Rs.4,28,513/- , exceeded the estimate. The second item is of allowances to the trainees, which were not in the original estimate, and the third item is the expense of Rs.10 lacs for the construction of the building of the training centre. But the overall expenses, including those incurred on the construction of the building, are within the limits laid down by the government, namely, Rs.65.85 lacs. As regards the building expenses, it has come on record that the Government has subsequently sanctioned even that amount (exhibit 28). So, it will be apparent, that the trust had not violated the terms of the Government Resolution, though as pointed out above, the Resolution did not lay down any limits on the expenses itemwise. All that it had mentioned was that the total expenses should not exceed Rs.65.85 lacs.



11) The applicant in this connection seems to have made two mistakes, one is to read the estimates originally made by the Yadav Baba Trust as the estimates made by the Government, and that the Government had desired that the itemwise expenses should not exceed this estimate. The second mistake, is to read the terms and conditions of the agreement dated 23.12.1996 (exhibit 14), as the terms and conditions laid down by the Government Resolution dated 9.5.1995, by which the amount of Rs.65.85 lacs was sanctioned to the trust. That agreement is obviously subsequent to the Government Resolution, and even subsequent to the utilisation of the said grant. Having made these obvious mistakes, the applicant is misled to make the said allegations.

12) The third allegation of the applicant is that an amount of Rs.3,18,535/- allegedly the balance out of the grant, which had remained unspent, was credited by the Trust to its corpus, when it was obligatory on the trust to return the said amount to the Central Government. It has to be noted in this connection that as has come on record, this amount had no relation to the grants received from the Central Government. The entire grant received from the Central Government together with the interest thereon was spent for the purposes

for which the grant was received, and the utilisation certificate was duly submitted to the Central Government. This amount, in fact, represents the interest on the grant received from the State Government as has been pointed out in the contention advanced on behalf of Shri. Hajare, and this argument is not refuted. The State Government had imposed no condition that the said amount of interest or for that matter the unutilised amount of the grant should be returned to them. But as pointed out above, the said amount was of the interest earned on the grant. By mistake, the auditor of the trust has not explained the nature of the amount and has classified the amount under the specious head "unspent grants". It must be remembered in this connection that the grant received from the State Government was Rs.65.85 lacs. It was received in 1995 in a lump sum, and was kept in the bank till the entire amount was spent during the span of about 1 year and 5 months. It was to be expected that this amount would earn interest during this period and it is this interest which is represented by the said amount. There is no allegation that the amount was either misutilized or not accounted for. One would have expected that after taking the inspection of the relevant accounts, the applicant would have

noticed this obvious fact, and not persisted with the said allegation made in the original complaint.

13) Another allegation made against the trust was that the trust had not shown the land purchased by it in its assets, nor had it accounted for its purchase price. This allegation, it may be noted, was not in the original charter of allegations filed by the applicant against the trust. The subject matter transpired in the deposition of one Shri. Sharad Wani, (Witness No.2) examined on behalf of the applicant. The facts relating to the said land are that the land was purchased by the villagers from one lady Smt. Bhimabai Gajare and donated by them to the trust. It admeasured 89 Ares. A portion of the land to the extent of 11 Ares was gifted by the trust to the Zilla Parishad, Ahmednagar for construction of the Samaj Vikas Mandir, by a deed dated 12.8.1997 (exhibit 22). This deed executed by the trust in favour of the Zilla Parishad is signed by Shri. Hajare, and Sarvashri. Mapari and Awati, the social activists working with Shri. Hajare had attested the same.

14) The contentions of Shri. Paralikar on behalf of Shri. Hajare for not accounting for this land from the inception, are not supported either by the facts or by the law. His first contention was that the land was purchased by the villagers in

the name of the Hind Swaraj Trust. It was not known to the trust, or to Shri. Hajare. The evidence contradicts this statement, since Shri. Hajare's activists Sarvashi. Mapari and Awati had identified Smt. Bhimabai Gajare and had attested the execution of the deed by her, respectively. Secondly, the trustees of the trust including Shri. Hajare were very much in the know of the fact that the land belonged to them. It is evidenced by the gift deed executed by Shri. Hajare in favour of the Zilla Parishad. His second contention that since the amount was not spent for the purchase of the land out of the funds of the trust, it was not accounted for in the accounts of the Trust, is also without substance. The principles of accountancy require that the land which was purchased, in fact, for Rs.45,000/- in the name of the Trust, though by the villagers from their funds, had to be shown in the accounts by making a double entry, one of the donation and the other of the purchase. Section 22 of the Bombay Public Trusts Act, 1950 requires that any changes in the position of the assets of a trust have to be reported to the Charity Commissioner within 90 days of the change. Admittedly, this has not been done till date. Thirdly, a portion of the land admeasuring 11 Ares was admittedly alienated by way of gift in favour of the Zilla Parishad without the permission of the

Charity Commission, contrary to section 36 of the said Act. Nor did the alienation reflect in the assets of the trust, which ought to have been updated till that time. We, therefore, find that there is a good deal of substance in the contention raised on behalf of the applicant, that the trust had committed an irregularity and also an illegality when it did not report both the acquisition of the land, admeasuring 89 Ares, and the alienation of 11 Ares out of it, to the Zilla Parishad, Ahmednagar. The alienation was also without the permission of the Charity Commissioner, which was illegal. However, the position in law remains that since no permission was taken from the Charity Commissioner for the alienation of the land, the land would not be deemed to have been validly transferred in favour of the Zilla Parishad, and it still remains the property of the trust. If this is so, the construction made on the land, will also become the property of the trust. There is, therefore, no loss to the trust. However, since the Trust did not take care to examine the provisions of law while alienating the land and induced the Zilla Parishad to take possession of the property and to construct thereon Samaj Mandir, there is apparent lack of care on the part of the trustees and to that extent there is maladministration.

15) As regards the allegation that the funds belonging to the trust were spent for celebrating the 60th birth-anniversary of Shri. Hajare, we find that there is no valid defence of the trust to the said allegation. Admittedly, an amount of about Rs.2.20 lacs was spent in the year 1998-99 when Shri. Hajare was felicitated on his birthday. Shri. Abhay Firodia, a businessman, gifted an equivalent amount to the trust subsequently. A defence was sought to be raised that since the entire amount spent for the birthday was received by the trust subsequently, the trust cannot be said to have spent any of its funds for the birthday celebrations. The defence is deceptive. In the first instance, the amount was received from Shri. Abhay Firodia many days after it was spent for the birthday celebrations. Secondly, Shri.Abhay Firodia gave the said amount as "donation" to the trust. Therefore, even that amount belonged to the trust and no amount belonging to the trust could have been spent for the purpose concerned. When confronted with this situation, Shri. Paralikar relied upon one of the objects of the Trust, which reads as follows: -

> "Clause 4(a) of the trust-deed: Appreciation and reward for advances in social and humanitarian services."

16) This clause in the object empowers the trustees to felicitate others for their praiseworthy services in the relevant fields. The trust has not been established to felicitate the trustees themselves, howsoever, laudable and unique the services they may render to the society. Nor can it be contended that the object of the trust was to felicitate the trustees for their services to the society. We wish that such an argument was not advanced. This is obviously an illegal utilisation of the trust's funds. It may further be noted here that the trust has obtained a certificate of exemption from the Income Tax Department to the donors, for the donations made by them to it. Shri. Abhay Firodia must have earned the requisite benefit in his tax liability, for the said donation. But that is beside the point for our purpose. All that can be said in this behalf is that the Trust was ill-advised for making the said expenses from its funds. It may be mentioned here that this allegation of the expenditure by the trust from its funds for the birthday celebration of Shri. Hajare was not one of the allegations in the original charter of allegations and appears to have been made only after the inspection of the accounts during the course of the inquiry proceedings before the Commission.

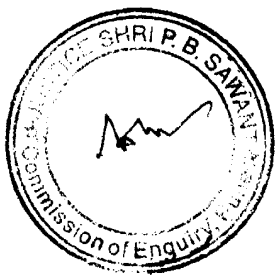
17) Coming now to the next allegation, viz., the purchase of a drip irrigation set from the Yadav Baba Trust, it is admitted that in the accounting year ending 31.3.1995, the trust had purchased a drip irrigation set from its' sister Trust - Sant Yadavbaba Shikshan Prasarak Mandal, Ralegan-Siddhi, for Rs.60,000/-. The bona fides of this purchase were questioned on behalf of the applicant, because of the misleading entries made in this behalf in the account books of the Yadavbaba Trust. The Yadavbaba Trust had not shown at any time in its assets, the drip irrigation set in question which according to them, was received as a gift from the villagers. Hence, although they received the amount of Rs.60,000/- by a cheque as the purchase price of the said set, for the first three years they showed it as an advance and in the accounting year of 1998, showed it as a donation from the present trust. If at all, the fault of making the wrong entries in their accounts lies with the Yadavbaba Trust. It is difficult to appreciate how the present trust can be held responsible for the said wrong entries made by the Yadavbaba Trust in its accounts. It is not disputed that the amount of Rs.60,000/- was paid to the Yadavbaba Trust by a cheque, and as far as the trust is concerned, it had shown the said expenses towards the purchase of the said set. That the

said set came in the possession of the trust in the accounting year 1995, and that it is still with the trust, is not disputed. We, therefore, find no substance in this allegation. This allegation also does not find place in the original charter of allegations and seems to have been made only after inspecting the accounts during the course of the Commission's proceedings.

18) As regards the allegations regarding the negative cash balances, on behalf of the applicant seven instances of such cash balances between 4.3.2002 and 29.3.2003 together amounting to Rs.27,273.50, are cited. The negative cash balances appear in the daily cashbooks as follows (exhibit 57): -

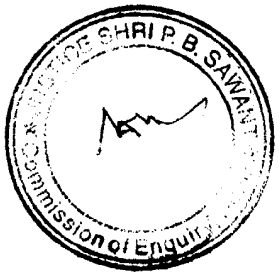
04.03.2002	Rs.6,585.00
13.03.2002	Rs.11,269.00
04.02.2003	Rs.2,303.90
03.03.2003	Rs.998.90
04.03.2003	Rs.1,268.90
05.03.2003	Rs.2,068.90
29.03.2003	Rs.2,778.90

19) The allegation (not part of the original allegations) in this connection is replied to on behalf of Shri. Hajare as follows. The entries involving these amounts, were made on the respective dates by a non-professional accountant. It appears,



that the relevant purchases were effected without making payment. The accountant had shown only on debit side the value of the purchases without showing on the credit side the value of the goods or services received. Since the corresponding amounts were not on hand on the respective days, the payments were made subsequently. Hence, the appearance of the negative cash balances on the respective dates. The explanation appears plausible. There is no reason otherwise for such entries to appear in the cashbook. It has further to be appreciated that beyond pointing out these instances, that too during a particular period, no contentions have been advanced in respect of them. The vague allegation made is that these expenses were made from unaccounted money. If this contention is to be accepted, it is difficult to appreciate that the amounts would at all be shown in the books of accounts. We are, therefore, unable to appreciate the allegation made in this behalf. Nor was any effort made on behalf of the applicant to connect these entries with any unaccounted money.

20) The allegation that the expenses of the calls on Shri. Hajare's mobile phone, were paid for by the trust, is answered on behalf of the trust as follows: -



It is admitted that the mobile phone used by Shri. Hajare had incurred expenses of Rs.45,897/- during the years 1989-90 to 2002-03 and these expenses were paid out of the Trust's funds. It is not disputed that these amounts were paid by cheques against the bills received from the mobile company. It is, however, contended that Shri. Hajare used this mobile phone not for his personal work, but for the work of the Trust. It is explained that Shri. Hajare is always on the move from place to place. It is further pointed out that he receives calls when he is outside the State or even in towns where the incoming calls are also chargeable. He has innumerable callers, and has also to contact many persons for the work of the trust Hence, these expenses on the mobile phone cannot be said to have been incurred improperly or for improper purposes. Beyond pointing out the amounts which were spent on the mobile phone during the relevant period, no argument has been advanced on behalf of the applicant in respect of the said expenses. It is not contended that either the expenses were an instance of corruption or maladministration. No comments are, therefore, necessary on this allegation.

B) <u>SANT YADAVBABA SHIKSHAN PRASARAK MANDAL</u>

21) Sant Yadavbaba Shikshan Prasarak Mandal, Ralegan-Siddhi is registered both under the Societies Registration Act as well as the Bombay Public Trusts Act. It was established in 1980, for the purpose, as its name suggests, of spreading education. Shri. Hajare was associated with the trust from the very beginning as its trustee and secretary. It has eight divisions (paras 1 to 3 of Shri. Jain's deposition): -

i) Shree Sant Nilobaray Vidyalaya.

ii) Shree Sant Nilobaray Higher Secondary School.

iii) Mandal Office.

iv) Sant Yadav Baba Vasati Griha (Students' Hostel).

v) Sant Yadav Baba Buildings Account.

vi) Shree Achyutrao Patwardhan Gramin Vikas

vii) Rashtriya Panlot Kendra (R.P.K.)

viii) CAPART.

The last division has nine sub-divisions.

22) In all ten allegations were made in the original charter of allegations against the administration of this trust. They were as follows: -

i) Although the trust has sizeable income, its audited accounts for the years 1982 to 1994 were submitted to the Charity Commissioner only on 31.3.1995, and similarly its

audited accounts for the years 1995 to 2002 were submitted only on 29.7.2003.

ii) Despite the objection of the auditor, construction worth crores of rupees was made without inviting tenders.

iii) No cash-book was maintained for 3 years viz. 1985,1987 and 1988 during which period, a large expenditure was incurred for construction, and this, inspite of the objection of the auditor.

iv) Shri. Hajare and two other trustees, namely, Sarvashri. Mapari and Awate gave loans worth lacs of rupees to the trust in cash, between 1986 to 1994 without the permission of the Charity Commissioner and despite the objection of the auditor.

v) Inspite of the fact that the trust had enough funds, the trust obtained grant during 1991-1992 from the Chief Minister's Relief Fund, and instead of spending it for the purpose for which it was received, the trust kept the amount in fixed deposit, for 3 years.

vi) Shri. Hajare was also the Chairman of the CAPART. He obtained funds for the trust of which he was a trustee, from CAPART for certain purposes, and instead of

spending them for the said purposes, kept them in fixed deposit and thus deceived the Central Government.

vii) Despite taking grants of more than rupees three lacs, Shri. Hajare represented to the media that the trust had not received any grant and thus fooled the people.

viii) Shri. Hajare collected lacs of rupees as assistance by representing to the people that the trust was running the hostel free for the failed students from the rural areas, and charged the students hefty fees.

ix) The accounts of the trust showed Rs.79,27,282/- in the reserved fund. This amount was not carried forward to the next year. This shows that there was a large scale fraud.

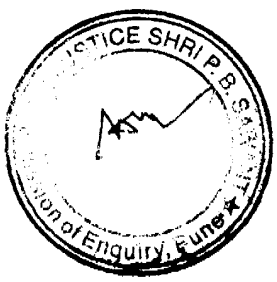
x) The trust charged fees to the trainees inspite of receiving grants from the Central Government for free training to the students in the training centre run by the trust. The trust thus deceived the Central Government and the students.

23) Coming to the first allegation, namely, that the Trust had not submitted its audited accounts for the year 1982 to 1994 before 31.3.1995 and the accounts for the years 1995 to 2002 till 29.7.2003, the provisions of the Bombay Public Trusts

Act, 1950 (hereinafter referred to as the Act) relating to the submission of the audited accounts are contained in sections 32, 33 and 34 of the Act and Rule 21 of the Bombay Public Trusts Rules, 1953 (hereinafter referred to as the Rules). Section 32 of the Act requires that every trustee of a public trust shall keep regular accounts in such form as may be approved by the Charity Commissioner, and shall contain such particulars as may be prescribed. Section 33 states that the accounts so kept shall be balanced each year on the thirty-first day of March or such other day, as may be fixed by the Charity Commissioner, and shall be audited annually by a chartered accountant. The person auditing shall not in any way be interested in, or connected with, the concerned trust. Section 34 casts obligations both on the auditor and the trustee. The auditor is required to prepare balance sheet and income and expenditure account and to forward a copy of the same alongwith a copy of his report to the trustees, and to the Deputy or Assistant Charity Commissioner of the Region or sub-region or to the Charity Commissioner, if the Charity Commission requires him to do so. The trustee is required to file a copy of the balance sheet and income and expenditure account forwarded by the auditor before the Deputy or Assistant Charity Commissioner of the Region or sub-

region or to the Charity Commissioner, if the Charity Commissioner required him to do so. The auditor shall in his report specify all cases of irregular, illegal or improper expenditure, or of the failure or omission to recover moneys or other property thereof, and state whether such expenditure, failure, omission, loss or waste was caused in consequence of the breach of trust, or misapplication or any other misconduct on the part of the trustees, or any other person. Rule 21 of the Rules states that the trustee shall get the accounts audited within six months of the date of balancing the accounts under sub-section (1) of section 33, and the auditor shall forward a copy of the balance sheet and the income and expenditure account along with his report to the Deputy or Assistant Charity Commissioner within a fortnight of the audit. The Deputy or Assistant Charity Commissioner may, however, for sufficient reasons, grant extension of time to do so. Section 67 of the Act states that failure to do so, shall be punishable with fine which may extend to Rs.1,000/-. Although it is true that while amending section 34 of the Act by adding sub-section 1A to it, casting obligation on the trust (alongwith the auditor) to file a copy of the balance sheet and the income and expenditure account before the Deputy or Assistant Charity Commissioner, as

the case may be, there was no corresponding amendment to Rule 21(1) requiring the trustee to forward a copy of the balance sheet etc. to the Deputy or Assistant Charity Commissioner within a specified time, since section 67 deals with contravention by anyone of any of the provisions of the Act, it will cover a case of a trustee/s on whom an obligation is cast under section 34(1A) to file a copy of the balance sheet etc. before the Deputy or Assistant Charity Commissioner and who fails to do so. Looking at the aforesaid provisions of the law, there is no doubt that the trust and, therefore, the trustees of the trust committed illegalities when the accounts for the year 1982 to 1994 were submitted for the first time on 31.3.1995 and the accounts for the years 1995 to 2002 were submitted on 29.7.2003. Since this illegality is punishable under section 67 of the Act, they were liable to be punished under it. This allegation has, therefore, to be upheld against the trustees. It may be mentioned here that there was no defence to this allegation of the failure to submit the accounts to the office of the Charity Commissioner. The only excuse made was that it was out of ignorance that the accounts remained to be filed with that authority within time. Needless to say that, this cannot be a defence in law.



24) The second allegation is with respect to the objection allegedly pointed out by the auditor for not inviting tenders while undertaking construction worth lacs of rupees. The applicant has not pointed out anywhere whether a contract was given by the opponent trust for the execution of any of the construction work that it had undertaken, nor has the auditor in his report pointed out any work which was executed through the contractor or contractors. The auditor has merely stated against the relevant column in the prescribed form, that no tenders were invited for carrying out the construction work. It is not stated by him that the contractor or contractors were in fact engaged without inviting tenders. At some places, he has also mentioned that the work was done departmentally. As has been pointed out by the opponent, in no case they had engaged a contractor to execute any of their construction work. Either the work was done through voluntary labor or departmentally. When this was realised by the applicant, he did not press this allegation (para 42). Hence, no comments are necessary on the said allegation.

25) The third allegation made in the original charter of allegations was that no cashbook was maintained for three years - 1985, 1987 and 1988 during which period a large expenditure

was incurred for the construction, and this, inspite of the objection of the auditor. It appears that this allegation made after the inspection of the accounts during the proceedings of the Commission, was expanded to include the period 1984 to 1991 and the year 2000 also, and it was contended that during all this period, no cashbook was maintained with a view to conceal corruption. The basis of this allegation is obviously the reports of the auditor for the relevant years. A perusal of the reports, shows that the auditor has not stated anywhere that no cashbook was maintained for any of these years, and this has been admitted by the applicant in paragraph 32 of his deposition. The basis of these allegations was the comments of the auditor against the relevant column in the prescribed form in which the accounts are submitted to the Charity Commissioner. The column and the comments may be reproduced here to appreciate the confusion: -

Column: - Whether the cash balance and the vouchers in the custody of the manager or trustee on the date of audit were in agreement with the accounts.

The remarks of the auditor against this column is as follows.

"Cashbook not written upto date."

For some years against this column, the remark of the auditor is "cash on hand was Rs." and the further portion is kept blank or it is mentioned there as "rupees nil".

26) In the first instance, it will be noted that the auditor has remarked about the cashbook as on the date he audited the accounts. He has not remarked about the cashbook "for the year" under audit. Obviously, on the date the accounts are audited, cashbook would not be uptodate because the cashbook is lying with him for some days for auditing the accounts, and as has been explained on behalf of the opponents in reply as well as in arguments, a rough cashbook was maintained for the period during which the cashbook was with the auditor, and since the cashbook was with the auditor, it could not be upto date till the date of the audit. This is not contradicted. There is, therefore, no substance in this allegation.

27) The fourth allegation was that Shri. Hajare and two other trustees, namely, Shri. Mapari and Shri. Awati gave loans worth lacs of rupees to the trust in cash, without the permission of the Charity Commissioner, and despite the objection of the auditor, between 1986 to 199.

28) The position with regard to the borrowings by way of hand loans by the trust, from the three trustees (para 7) is as follows:-

i) Shri. Hajare

1993-94	Rs.70,000/-
1994-95	Rs.50,122/-
1997-98	Rs.1,75,000/-
1998-99	Rs.5,000/-
2002-03	Rs. 54,810/- and
	Rs. 14,745/-

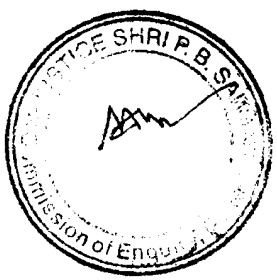
ii) Shri. Kisan Hari Mapari

1987-88	Rs.2,000/-
1989-90	Rs.13,400/-

iii) Shri.Bhausaheb Awati

1987-88	Rs.15,500/-
1988-89	Rs.13,500/-
1993-94	Rs.86,633/-

29) As has been explained by the opponent, these amounts were taken from the trustees themselves by way of handloans. No interest whatsoever was charged by the trustees or was paid to them nor is there any such allegation. If the trustees themselves give money to the trust by way of a



handloan and without charging any interest, it will be difficult to hold that the provisions of section 36A of the Act would be attracted to such loans. If the moneys, as stated by the trustees, were needed to meet contingencies, it will be impracticable for the trustees to obtain the Charity Commissioner's sanction before borrowing them by way of hand loans. These moneys, however, as has been explained on behalf of the opponent, were not unaccounted in the hands of the said trustees. In fact, the unaccounted money would never enter any account, much less the accounts of a public trust. The intention of giving the hand-loans was not to make any investment or to earn any profit therefrom. As has been explained, Shri. Hajare had this money saved from his pension as well as the cash awards, earned by him from time to time. Both Sarvashri Mapari and Awati are agriculturists and their money cannot be said to be unaccounted. In the circumstances, it is difficult to understand the purposes for which the allegation has been made. It is also not possible to accept the contention that since the amounts above Rs.20,000/- were given by these three trustees to the trust by cash, they would attract the prohibition contained in section 269SS of the Income Tax Act. In the first instance, as pointed out earlier, they were hand loans for

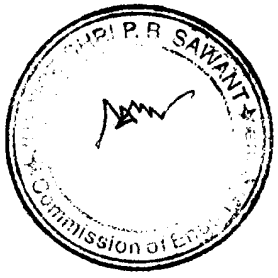
temporary purposes. Secondly, they carried no interest. Thirdly, the three persons who had given the said amounts were not paying income-tax. All the three were also agriculturists for all practical purposes. As regards, the repayment in cash above Rs.20,000/-, there is no doubt that while repaying the amounts to these trustees, there was an infringement of the provisions of section 269T of the Income Tax Act and to that extent there is an illegality in as much as the Act requires that the repayment had to be made by a cross cheque or a demand draft. Instead it was made in cash. There is, however, no allegation that the said amounts were either misappropriated or siphoned off for some other purposes. It has to be realized in this connection that the expenditure incurred out of the said amounts is not questioned nor was the purpose of the expenses..

30) As regards the money borrowed as hand loans from the persons other than the trustees of the trust (para 7), the situation is as follows: -

Shri. Sahebrao Pathare	1987-88	Rs.11,520/-
	1993-94	Rs.1,870/-
Hind Swaraj Trust	2002-03	Rs. 53,000/-
Shri. Babu Genu Mapari	1995-96	Rs. 41,000/-
Shri. Bhau Nana Kadam	1995-96	Rs. 32,394/-

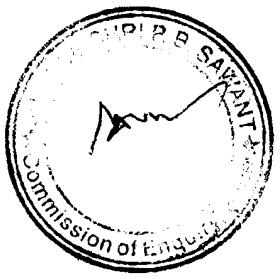
31) This allegation was not in the original allegations made by the applicant. The allegation was made for the first time after taking inspection of the accounts of the trust, and what is more the allegation was made by the applicant while he was in the witness box. To the extent that the amounts taken from the outsiders were without the permission of the Charity Commissioner, there was a violation of the Bombay Public Trusts Act. However, it is nobody's case that the said amounts were taken as "fixed period loans" or they bore any interest. No financial burden has thus been placed on the trust by taking the said loans. To the extent that these amounts were received from the outsiders in cash and were also refunded in cash without the permission of the Charity Commissioner, there is undoubtedly a violation of the provisions of Section 36A(3) of the Trust Act.

32) As regards the fifth allegation, the same relates to two amounts, namely, Rs.3,00,000/- and Rs.2,00,000/- received on different occasions in the years 1990-91 and 1991-92 from the Chief Minister's Relief Fund. There is no evidence led on behalf of the applicant that these amounts were taken from the Chief Minister's Fund by exercising pressure. This allegation is not further pressed on behalf of the applicant either in the oral



or written arguments. In fact, there was no reference to the said allegation in the examination-in-chief of the applicant. All the same, his cross-examination on this point has brought on record that the amount of rupees three lacs was received for the purpose of the Guest House meant for the visitors to Ralegan-Siddhi and as has been argued by Shri. Paralikar on behalf of the Shri. Hajare, the amount was supposed to be kept in fixed deposit, and out of the interest earned thereon, the remuneration of the English Speaking Tourist Guide was to be paid. It may be mentioned in this connection that several people particularly from the other States, visit Ralegan-Sididhi to survey the work done by the trust at grassroot level and the trust needs a guide to explain to the tourists the various types of works, done by it. There is no allegation separately with regard to the amount of rupees two lacs received from the Chief Minister's Fund. But as stated above, the said allegation itself was not pressed by or on behalf of the applicant.

33) The sixth allegation was that Shri. Hajare was also the Chairman of CAPART, and in the said capacity he had obtained funds for the trust of which he was a trustee, from CAPART for certain purposes, and instead of spending the funds for the said purposes, he kept them in fixed deposit and thus



deceived the Central Government. The applicant while leading the evidence did not press this allegation and gave it up. His statement in para 47 of his deposition in that behalf is as follows: -

> "It is correct to say that the CAPART does not give donations but only the grants, and Shri. Hajare was not the chairman of the CAPART during the relevant period. I have no complaints against the amounts granted by the CAPART to Yadavbaba Trust..... I have given up the allegations made in my affidavit at Point Nos. 7 and 9 ....."

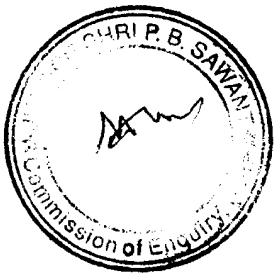
The allegations in the affidavit at Point Nos. 7 and 9 relate to the grants received from the CAPART.

34) The seventh allegation was that although Shri. Hajare had received the grants worth more than rupees three crores, in his interview to the television on 2.8.2003, he stated that the Trust had not received any grants, and had thus deceived the people. However, this allegation was not pressed by the applicant either in his oral evidence or in the arguments either written or oral made on his behalf. As stated earlier, he had given up this point. (para 47 of his deposition).

35) Coming to the allegation (viii), namely, Shri. Hajare had collected lacs of rupees as assistance by representing to the people that the trust was running the hostel free for the failed students from the rural areas and by charging the students hefty fees, this allegation again was also not pressed by the applicant in his deposition, nor did he lead any evidence in support of it. The allegation was also not referred to either in the oral or written submissions. It is not, therefore, necessary to deal with it.

36) Coming now to allegation (ix), namely, that the accounts of the trust showed Rs.79,27,782/- received from CAPART, but was not shown in the accounts ending on 31.3.1999, so also an amount of Rs.54,11,878/- appearing as CAPART Project Capital Expenses shown in the balance-sheet ending 31.3.1998, does not appear in the balance-sheet for the year ending 31.3.1999. This allegation has been given up by the applicant. (Para 47 of his deposition.) No comments are, therefore, necessary on these allegations.

37) The last allegation was that the trust charged fees to the trainees' inspite of receiving grants from the Central Government for free training to the students in the training centre run by the trust. The trust thus deceived the Central



Government and the students. Shri. Jain as pointed out earlier had also given up this allegation. (Para 47 of his deposition.)

38) In addition to the above allegations, which were contained in the original charter of allegations, Shri. Jain also made the following allegations, some of which were made in the additional charter of allegations filed on 10.6.2004 (exhibit 5 in Hind Swaraj Trust) and in the deposition of Shri. Jain, and also in his written submissions.

These allegations may be listed as follows.

a) The trust had not submitted the budgets contemplated by section 31A r.w. Rule 61(a) of the Trust Act, although its' annual income, admittedly, was in excess of rupees ten thousand.

b) The trust did not account for the immovable properties purchased by it in 1984-85, namely, survey Nos. 602, admeasuring 3 Hectares 1 Are, survey No. 603, admeasuring 55 Ares, and part of survey No. 604, admeasuring 75 Ares of Ralegan-Siddhi.

c) The trust had kept the amounts in fixed deposit in banks other than the nationalised and scheduled banks in contravention of Section 35 of the Trust Act.

d) The trust had given finance to (i) Swami Vivekanand Kritadnyata Nidhi, rupees one lac and (ii) to Shri. Santosh Baban Dasar, Rs.5,000/- in contravention of Section 35 of the Act in the years 1998-99.

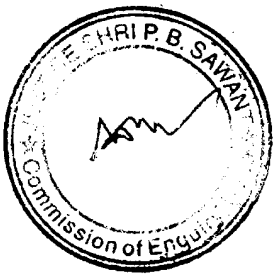
e) The trust spent Rs.46,374/- for renovating a temple in contravention of its objects, which is to impart secular education.

f) The trust has not explained how it received an amount of Rs.74,69,198/-, as grant under the CAPART's scheme, for the drip irrigation project, and also Rs.60,000/- from Hind Swaraj Trust as donation.

g) The trust has not explained as to how it has returned rupees four lacs received as donation from Ahmednagar Health Foundation.

h) The trust has not explained how it received Rs.1,50,000/- from the National West Land Development Board in 1986-87, when it was not one of its' objects to reclaim the waste lands.

i) The accounts of the trust for the years 1991-93 and 1993-94 are manipulated in as much as the transactions belonging to the financial years 1993-94 are shown in the accounts of 1991-92.



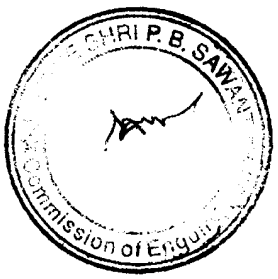
j) The trust has not explained as to how it received the amount of Rs. 3,63,790/- for the year 1992-93 from CAPART for the project of vermiculture. The trust has also not explained as to how it received money from CAPART for Ganesh Water Supply Scheme, Kohimi Project as loan, and without the permission of the Charity Commissioner, and when it was not even the object of the trust.

k) The accounts of the trust for the year 2003-04 are manipulated in asmuch as the transactions which belonged to the year 2003-2004 are shown as part of the transactions of the year 2002.

39) In addition to the above, the following additional allegations were made in the arguments before the commission:

i) Non-consolidation of the accounts of all the divisions of the trust and non-submission of the accounts of the trust as a whole, to the Charity Commissioner for the years 1996 to 2003.

ii) Falsification of accounts leading to the corrupt practice in respect of the fixed deposit of Rs.2,00,000/- in the year 1995-96.



iii) Unexplained advances to the trust, in all to the tune of Rs.2,49,167.47 by Rajaram Gajare, the accountant of the trust.

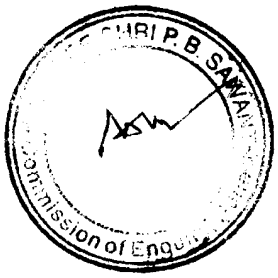
iv) The receipt of Rs.1,00,000/- in cash as a loan from Shri. Ganga Mapari in the year 2001-02 in the Hostel Division of the trust in violation of the provisions of the Income Tax Act as well as the Trust Act, and although the trust had a surplus cash of Rs.1,72,132/- on hand at the relevant time.

v) Evasion of sales tax on expenditure worth Rs.8,00,000/- on the purchase of the building material during the year 1989-2003.

vi) Illegal expenditure of Rs.17,85,000/- on hostel maintenance during the year 1996-2003 when the hostel did not belong to the trust.

vii) Non-reflection in the accounts, of the transactions of the other divisions.

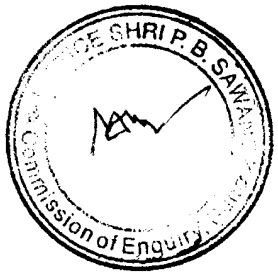
viii) Although the Rashtriya Panlot Prashikshan Kendra (RPK) is one of the divisions of the trust, its' building is constructed by the Hind Swaraj Trust and all its activities are also carried out by that trust.



ix) The unauthorised operation of Account No.38 with the Adarsha Gramin Co-operative Credit Society by Shri.Hajare and Shri. Dagadu Kisan Mapari from 11.6.1998 till date, although that account belongs to the trust.

40) Coming to the first allegation, namely, non-submission of the annual budget to the Charity Commissioner as required by Section 31A of the Trust Act, it has come on record that the opponent had submitted the budget as required by the said provision in the first year of the establishment of the trust, namely, during the year 1984. However, thereafter till date, as admitted by and on behalf of Shri. Hajare, no budget was sent to the Charity Commissioner. This irregularity has been admitted by and on behalf of the trust.

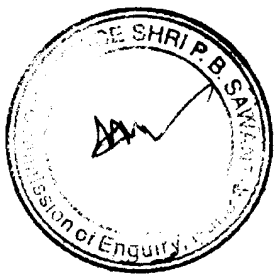
41) As regards the second allegation, namely, that the trust had not shown in the list of its properties, the properties purchased by it in the year 1980-81, as admitted by and on behalf of the trust, there is, no doubt, that the properties purchased by the trust, namely, Survey No. 602, admeasuring 1 Hectare 1 Ares, Survey No. 603, admeasuring 58 Ares and part of Survey No. 604, admeasuring 75 Ares and the construction made thereon from time to time are not shown in the schedule of properties of the trust as registered with the Charity



Commissioner. To that extent there is a breach of the provisions of Section 22 of the Trust Act. However, the purchase of the aforesaid pieces of land as also the construction made thereon has been duly reflected in the audited accounts of the trust.

42) The next grievance is that the trust had not, in breach of Section 35 of the Act, invested its moneys in the scheduled banks as defined by the Reserve Bank of India Act, 1934, or in the postal savings or in a co-operative bank approved by the State Government or invested them in the public securities. Instead, it had kept them in (i) Parner Taluka Sainik Sahakari Bank Ltd. and (ii) Adarsha Gramin Bigarsheti Patsanstha Maryadit. which was not permissible. To that extent the trust had committed irregularities.

43) The next allegation was that Rs.1,00,000/- were given by the trust as a loan to the Swami Vivekanand Kritadnyata Nidhi, and Rs.5,000/- were given by it to one Shri. Santosh Dasare, an employee of the trust, as an advance against his salary, in the year 1988-89. In the reply, the opponent has stated that the loan of Rs.1,00,000/- was given by the trust to the Swami Vivekanand Kritadnyata Nidhi for providing tap water to village Ralegan-Siddhi. No interest was charged on the said loan. As regards Rs.5,000/- paid to the employee, it was an



advance against his salary as he needed the amount for some emergency. While the amount of Rs.5,000/- given to Shri. Dasare, an employee of the Trust, was by way of advance against his salary and therefore, it is not a loan. The amount of Rs.1,00,000/- given to Swami Vivekanand Kritadnyata Nidhi is a loan, which is not permitted by the trust-deed. What is more, the loan was given without interest which also caused a loss of revenue to the Trust. The said loan was, therefore, being against the objects of the Trust, is illegal.

44) The further allegation is that an amount of Rs.46,374/- was spent by the trust for the renovation of the temple and the trust could not do so since its' object was to impart secular education. The defence taken on behalf of the trust that secularism does not exclude the expenses on temple is ill-conceived. To that extent the allegation of the applicant has substance in it. The second defence is that the hall belonging to the Yadavbaba Mandir on which moneys were spent for its' renovation, is used by the villagers as a meeting place and all decisions affecting the inhabitants of the Ralegan-Siddhi village, are taken by assembling in that hall. It is not denied that Ralegan-Siddhi has a Grampanchayat and if the villagers want to meet to take decisions affecting them, they can use the

place belonging to the Grampanchayat. In any case, it is not an object of the trust to spend money on halls used by the villagers for their assembly. The trust is not authorised to spend money on every social object. It can spend money only on the objects, which fall strictly within its purview, and as pointed out above, the renovation of the hall in question for the purpose of the villagers' assembly, is not an object of the trust. Hence, this explanation appears to be without any basis and the contention of the applicant has to be upheld.

45) The further allegation that Rs.74,69,198/- were received by the Trust for drip irrigation scheme, is not pressed on behalf of the applicant, obviously because it could not be shown that the amount was received by the trust for the said purpose. On the other hand, as has been contended on behalf of the opponent this amount represents various amounts received as grants for various other purposes.

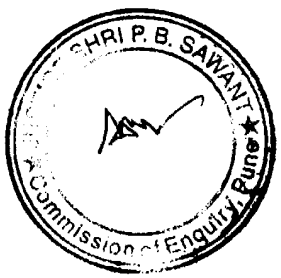
46) As regards Rs.60,000/- received by the trust for the drip irrigation set, as has been pointed out while discussing the allegations against the Hind Swaraj Trust, this trust had received the said set from the villagers as a gift, which was lying with them unused. The accountant of the trust did not know how to account for this, and had not shown it in its assets

in the accounts. Ultimately, when it was sold to the Hind Swaraj Trust for Rs.60,000/-, the said amount was shown in the accounts as donation from that trust. There appears to be some substance in this contention in as muchas it is not denied that the said set was given by the villagers to the trust and was lying in the school compound till it was purchased by the Hind Swaraj Trust. The trust cannot be said to have tampered with the set. On the other hand, in as much as it has cashed it by selling it to the Hind Swaraj Trust for Rs.60,000/- and showed the said amount in its' accounts, no charge either of corruption or maladministration can be made against it.

47) As regards the return of Rs.4,00,000/- to the Ahmednagar Health Foundation, as has been explained by the opponent, the villagers had constructed by their voluntary labour, the school building in Ralegan-Siddhi. They did not want any help either in cash or kind from any person or institution for that purpose. However, Shri. Naval K. Firodia, a trustee of the Hind Swaraj Trust desired to do something for the school, and sent on his own, steel worth Rs.6,47,223/- through the Ahmednagar Health Foundation, another trust, and Rs.3 lacs by cheque. Since the villagers had decided that the school should be built on self-help basis, and without taking any assistance of

any kind from anyone as stated above, they decided to return the donation received from Shri.Naval Firodia through the Ahmednagar Health Foundation, and the amount was returned in two installments of Rs. 2 lacs each to the said Foundation. The balance is yet to be returned. That is how this donation has been returned to the Ahmednagar Health Foundation in part and that is the amount of Rs.4,00,000/- which appears in its accounts as donation returned to the Foundation. This has not been controverted. The point is also not pressed in the written or oral submissions before the Commission.

48) The next allegation is that Rs.1,50,000/- were received by the trust from the National Wasteland Development Board in 1986-87, when it was not the object of the trust to reclaim the wasteland. The opponent trust has pointed out that, in fact, only an amount of Rs.1,00,050/- and not the amount of Rs.1,50,000/- was received from the Wasteland Board. That amount was received for the purpose of the development of the nursery. The trust has developed the nursery and grown plants, which have been utilised for plantation through out the village and the proof of the same is there for any one to see. Since this point is not pressed, it is not necessary to comment on it any further.



49) As regards the allegations at (j) and (k), namely, that there is a difference between the balance as shown in the balance-sheet and the audited reports for the respective years, namely, 1991-92, 1992-93 and 2002-2003, the facts on record reveal that while the amounts shown in the balance-sheet are at the end of the respective years, the auditor has shown the amounts in his report as on the dates of the audit. This point is also not pressed and, therefore, needs no discussion.

50) As regards the allegation that the trust had received Rs.3,63,790/- for the project of vermiculture from CAPART, and a large amount from the same institution as a loan for the Ganesh Water Scheme, Kohimi Project, although the said scheme did not fall within the objects of the trust, and that the said loan was taken without the permission of the Charity Commissioner, the trust has explained that both the amounts were received as grants for the respective projects and no loan was taken for any of the two projects from CAPART. Secondly, as far as vermiculture project is concerned, it was completed successfully. However, as regards the Ganesh Water Supply Scheme, it could not be implemented and the amount of the grant was returned with interest to CAPART. This is not controverted.

51) Coming now to the charges for the first time advanced in arguments, as detailed and pointed out above, the first of these allegations is that the trust had not submitted to the Charity Commissioner the consolidated accounts of all the divisions of the trust by one document. Another argument was that the accounts of some divisions were not sent to the Charity Commissioner even separately. The divisions whose accounts were not sent and the years for which they were not sent, were as follows (Exhibit 5): -

31.3.1996 Hostel, R.P.K. & Achyutrao Patwardhan

31.3.1998 Hostel, R.P.K., Achyutrao Patwardhan and CAPART

31.3.1999 Hostel, Achyutrao Patwardhan and Media Centre.

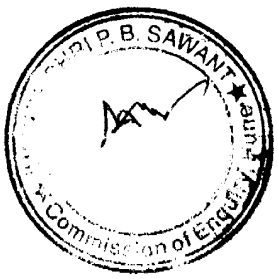
31.3.2000 Hostel, R.P.K., Achyutrao Patwardhan, Medical centre

and Building Fund.

31.3.2001 Achyutrao Patwardhan and Media Centre.

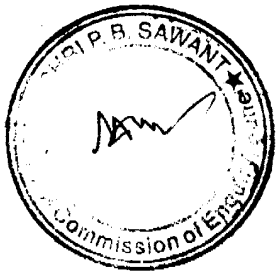
31.3.2002 Achyutrao Patwardhan, Media Centre and R.P.I.

52) It is contended on behalf of the applicant that these omissions were made to avoid payment of income tax on the consolidated income of the trust, and also to avoid payment of contribution to the public trust administration fund under the Bombay Public Trust Act. In the first instance, the trust is not



liable to pay income tax and it is also not liable to pay its contribution to the public trust administration fund, since as contended on behalf of Shri. Hajare, it is exempted from both the liabilities. However, it is true that the consolidated accounts of the trust comprising the accounts of all the divisions, were not sent during the years concerned to the Charity Commissioner. There is no explanation given for not sending the same. To that extent, there is illegality and this amounts to the maladministration of the trust.

53) The next contention is that the trust has not explained from where it had received Rs.2,00,000/- as donation on 1.4.1995 shown in the books of accounts. There is an entry of a fixed deposit made with the Parner Sainik Sahakari Bank of the equivalent amount. The accounts also show that this fixed deposit was prematurely encashed on 11.11.1995, and on the same day the amount of Rs.2,00,000/- is shown as having been given as handloan to the Hind Swaraj Trust, the sister trust. However, the interest, it must have earned for about 7 months on the said fixed deposit, has not been shown anywhere in the accounts of the trust. According to the applicant, this shows falsification of the accounts of the trust, with a reason to believe that many such transactions must have taken place and



not reflected in the accounts of the trust. Shri. Hajare. has not explained as to how the amount of Rs.2,00,000/- came to be received by the trust on 11.4.1995 and, therefore, the entries pertaining to the said amount of Rs.2,00,000/- made in the accounts have remained unexplained. There is no doubt that some mystery surrounds the so-called donation of the said Rs.2,00,000/-. The record does not show as stated above, from where the said donation has been received. There is also no documentary evidence of the fixed deposit made in the Parner Sainik Sahakari Bank Ltd. and of what happened to the interest for 7 months earned on the so-called fixed deposit. These are thus two illegalities with regard to the said amount of Rs.2,00,000/-. In the first instance, the amount was deposited in the non-scheduled Bank viz. the Parner Sainik Sahakari Bank and although the amount is accounted for, the interest on the said amount for seven months is not accounted for. The Commission is, therefore, constrained to conclude that the trust has failed to give any explanation with regard to the receipt of the said amount of Rs.2 lacs and to account for the interest. To that extent there is definitely an illegality on the part of the trust.

54) The next allegation is that in all an amount of Rs.2,49,167.47 is shown in the books of accounts as having been received at different times from one Rajaram Gajare, who was admittedly a Superintendent of the hostel belonging to the trust. His monthly salary is Rs.2,000/-. It is not, therefore, possible to believe that this gentleman had from his own purse paid the said amount from time to time.

55) On behalf of Shri. Hajare it is explained that the advance amount of Rs. 1,00,000/- towards the mess charges of the trainees participating in the camp held by the Nilobaray division of the trust, from 27.5.2002 to 1.6.2002 was paid by the Education Officer of the Zilla Parishad in cash on 20.5.2002. Shri. Gajare deposited the said amount in the bank. A perusal of exhibit 8, which is the extract of the account books of the trust, reveals the following entries on 21.5.2002: -

Particulars	Debit	Credit
Opening balance	9,104.51	
Suresh Rajaram Pathare Tarun Mandal		8,325.00
Cash Deposit in Bank		1,00,000.00
Rajaram Gajare Anamat Khate (Mel Ghatala)	99,220.49	

1,08.325.00 1,08,325.00

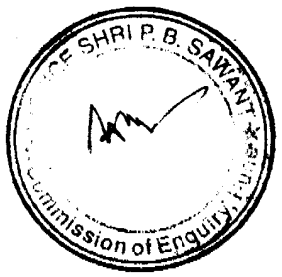
56) These entries in the books show that the accountant has tried to tally the amounts as above in the books of accounts. What the accountant has done is to take the opening balance of Rs.9,104.51 as well as the deposit of Rs.1,00,000/- as the amount available with the trust on that day, and after deducting therefrom Rs. 8,325/-, has shown the net amount of Rs.99,220.49 as being received as advance from Shri. Gajare, which as pointed out above is, in fact, the amount received by Shri. Gajare from the Education Officer. But as explained earlier the accountant who is not a professional man has tried to tally the entries in the account books to the best of his understanding. The evidence of Shri. Gajare and the letter pertaining to Rs. 1,00,000/- are at exhibits 107 and 108, respectively, in the Hind Swaraj Trust proceedings.

57) As regards the rest of the amount of Rs. 2,49,167.47, they represent the value of the purchases made by Shri.Gajare on credit for the hostel, and the accountant has entered the said value as amounts received from Shri. Gajare. They are not, therefore, the amounts received from Shri. Gajare. It is the faulty procedure adopted by the accountant to show the said amounts in the manner in which he has done.

That has created the confusion resulting into the present allegations by the applicant.

58) As regards the allegation that one Shri. Ganga Mapari, a trustee of the trust, had given a handloan of Rs. 1 lac, and the trust had taken the same from him on 3.8.2001, although the trust had on hand a cash balance of Rs.1,72,138/-, as has been stated on behalf of Shri. Hajare, at that time the construction work undertaken by the trust was under way. The loan taken from Shri. Ganga Mapari was by way of a handloan without interest. Merely because the trust had some money on hand, it did not prevent it from taking handloans from others, including its' own trustee Shri. Ganga Mapari. It has also been pointed out that Shri. Mapari is an agriculturist and the Income Tax Act does not prevent receiving money from the agriculturists in cash, whatever the amount. We do not find anything objectionable in this handloan when the trust had paid no interest to Shri. Mapari.

59) As regards the allegation that the amount of Rs.8 lacs as detailed in exhibit 18, was spent by the trust between 1989-2003 without corresponding bills. It is not disputed that, there are office-vouchers for the amounts and these vouchers are signed by the very persons who have received the amounts.



These vouchers further indicate the purpose for which the money was received by the payees. We, therefore, find no merit in this contention.

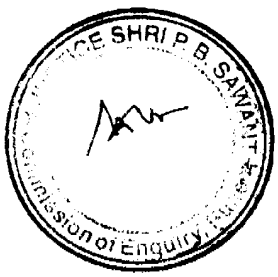
60) The other aspect of the very same allegation is that the opponent had avoided to pay sales tax on the material purchased for the construction without bills, during the period 1989 to 2003. The reply on behalf of the opponent is that the construction was either done by voluntary labour or departmentally. The material was needed for such construction and there is no dispute that it was purchased on vouchers and most of it, from the local retailers. Secondly, the allegation made by the applicant in this behalf is vague in asmuch as he has not clarified as to which items purchased by the opponent were liable to pay the sales tax and whether any of these items were purchased from the vendors other than the local retail traders. The local retail vendors, being resellers, were not liable to pay sales tax. It was the vendors from whom the local retail traders had purchased the material, who had to bear the liability. The applicant has also not made it clear whether the price at which the opponent had purchased the material from the retail vendors had included the sales tax or not. This being

the case, the contention cannot be upheld for want of the relevant evidence.

61) The next allegation is that the trust had spent Rs.17,85,000/- during the year 1996-2003 on hostel maintenance (exhibit 19) with a view to show a reduced income to avoid paying income tax. Further, as detailed in exhibit 19, the said amounts includes an amount of Rs.10,81,624/- spent on construction, furniture and fixtures in the hostel. The expenditure of this huge amount on the property belonging to another trust is clearly unjustified. No explanation has been given on behalf of the opponent and this contention has to be upheld.

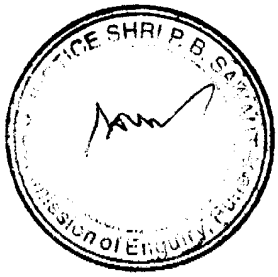
62) The next allegation is in respect of (i) inter-division transfer of funds between R.P.K. and the Media Centre and (ii) between the hostel division and the building division. The main contentions relate to the dates of the transfer. There is no allegation that the divisional- transfers are not accounted for. The contention is that the dates of the entries in the respective divisions are not identical. There is no substance in this contention.

63) It is next alleged that both this trust as well as the Hind Swaraj Trust are running R.P.K. Centre. The further



allegations on the subject are made on the basis of this premise. The facts are different. As has been made amply clear by the opponent, the R.P.K. is being run by the Hind Swaraj Trust and what is being looked after by the R.P.K. division of this trust, is the messing of the trainees in the R.P.K. centre. The other division of this trust, namely, the hostel division, looks after the hostel of the students studying in the educational institutions run by this trust, and the said educational institutions do not include the R.P.K. The contentions advanced on behalf of the applicant on this subject are the result of the basic misunderstanding or the confusion between the messing of the R.P.K. trainees looked after by this trust and the hostel run by this trust for its own educational institutions on one hand and the R.P.K. centre run by the Hind Swaraj Trust, on the other.

64) The last of the allegations is in respect of the alleged unauthorised account No.38 in the name of Shri. Anna Hajare and Shri. Dagadu Kisan Mapari from 11.6.1998 tilldate. This account is in the Adarsha Gramin Bigarsheti Sahakari Patsanstha Ltd. The further allegation is that the accounts of this account for the period 1998 to 2000 were not even shown in the hostel division of the trust or in the accounts of any other



division of the trust. However, after 2000, the accounts are being shown in the hostel division of the trust.

65) The opponent has not explained as to why this account was opened in the personal name of Shri. Anna Hajare and Shri. Mapari. If it was the account of the hostel division, there was/is already a separate account of the hostel division of the trust. Secondly, there is no explanation as to why the accounts of this account were not shown even in the accounts of the hostel division of this trust for the period 1998-2000. The contention of the applicant that this was a secret account kept by Shri. Hajare and Shri. Mapari, is not borne out by the facts on record. This is so, firstly, because the account was maintained from 1998 onwards till date in the said credit society. Secondly, from the year 2000 onwards, this account is shown under the hostel division of the trust. This has been done since the year 2000, i.e. much before any allegations were even whispered in that connection. Thirdly, beyond making a bald allegation that this was a secret account kept by Shri. Hajare and Shri. Mapari, no evidence has been led to show in what manner the operation of the account was secret. There is no doubt that the maintenance of this account separately and in the personal names of the two persons was not shown to have been necessary

for any purpose, and the reasons, if any, have not been explained. Such an account is bound to raise doubts about it. But as stated earlier, the applicant has not shown as to what secret operations were conducted through this account. This will, at the most, amount to an irregularity in the maintenance of the accounts.

C) **BHRASHTACHAR VIRODHI JANANDOLAN TRUST**

66) The following allegations were made by the applicant in respect of the affairs of this trust (hereinafter referred to as Janandolan also): -

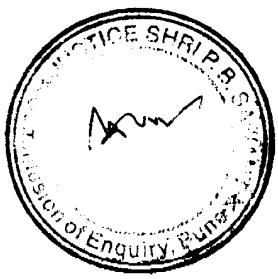
i) The society and the trust were registered illegally.

ii) In the management of the trust, there is a large-scale corruption, and there are also irregularities as detailed at points 10 onwards below.

iii) The expression "Bhrashtachar Virodh" (Anti-Corruption) in the name of the trust, is illegal.

iv) The continuance of the trust without the requisite number of the trustees/members had been illegal.

v) The documents submitted for the registration of the trust were irregular and deficient.



vi) The appointment of the treasurer of the trust was illegal. Hence, the operation of the trust and its accounts was illegal.

vii) There were no meetings of the trust as required by law.

viii) The establishment of the trust itself was illegal.

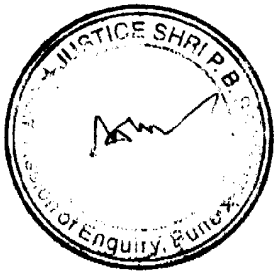
ix) The objects of the trust are not according to law.

x) The trust has not maintained regular accounts. The accounts are manipulated and the expenses shown to have been incurred by the trust are illegal. The trust has spent money on matters which are not even the objects of the trust. The reports of the auditor are incorrect.

xi) The trust had collected money a year in advance of its establishment. The moneys so collected were not all shown in its account and a large part of the amounts so collected was misappropriated.

xii) The District Committees of the trust collected large amounts in the name of the trust, but were not accounted for.

xiii) There was a misappropriation of the funds of the trust after it was established.



xiv) The receipts of the trust do not mention the registration number of the trust as also the registration number under the Income Tax Act. There is also no signature of the donors on the receipts and the signature of the recipients of the amounts. By this device, Shri. Hajare has made large-scale defalcations.

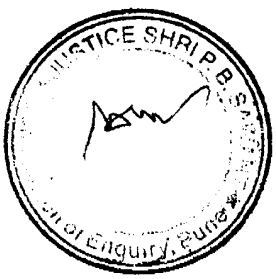
xv) Although by 31.3.1997, the trust had collected Rs.1,97,402/-, in the application for registration made by Shri. Hajare alongwith his affidavit, showed only an amount of Rs.500/- as the total funds of the trust.

xvi) The trust had not filed the audited statements of accounts for the years 1998-99 to 2001-02.

xvii) There is misappropriation of huge amount of the funds in asmuchas there is a vast difference in the amount actually collected by the trust and that shown in the accounts of the trust.

xviii) Shri. Hajare has not shown the moneys collected by him for the expenses of petrol.

xix) Shri. Hajare has handed over the trust to the people with criminal background after illegally removing the trustees associated with the trust from the beginning.



xx) Individuals with criminal background have been made the heads of the District Committees of the trust for the purposes of collecting money from the members of the public by pressurising them.

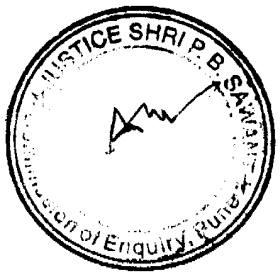
xxi) The trust has violated the Income Tax Act and Bombay Public Trusts Act by collecting Rs.75,000/- from an institution which was not legally established.

Non compliance and the contravention of the law at the time of registration of the Janandolan and thereafter.

67) The lack of the requisite number of members while registering the Janandolan as a society. The allegation is that, the provisions of section 1 of the Societies Registration Act, 1860, require that any 7 or more persons have to subscribe their names to the memorandum of association for forming a society under the Act. According to the documentary evidence, which has come on record, there is no doubt that Father Debrato, who was supposed to be one of the seven members of the society, had not signed the memorandum of association at the time of the registration of the society. In fact, as it transpires now, he has not signed the same till date. However, the Registrar of the Societies had registered the institution as a society under the Act. That was clearly contrary to law.

68) The record also shows that the Janandolan was registered as a trust under the Bombay Public Trusts Act, 1950 (hereinafter referred to as the Trust Act) after an inquiry under section 19 of that Act, by order dated 5.11.1997 passed by the Assistant Charity Commissioner. The memorandum of association with the rules of the society submitted by Shri. Hajare to the Assistant Charity Commissioner at the time of the registration of the Janandolan as a trust, has to be treated as the instrument of trust according to the provisions of Section 3(7A) of the Trust Act. The rules of the trust do not require any minimum number of members for its formation as a trust. The Trust Act also does not require any minimum number of the trustees for the establishment of the trust. Hence, it will have to be held that the Trust was legally registered on 5.11.1997, under the Trust Act. The rules which have to be treated as a part of the instrument of trust do require that there should be at any point of time minimum 7 trustees. The letter dated 10.11.2001 and the original affidavit of Father Debrato makes it clear that Father Debrato continued to be the trustee of the trust till 10.11.2001 from its inception.

69) However, Shri. Avinash Dharmadhikari, one of the trustees resigned in 1998, Shri. Govindbhai Shroff resigned on



14.10.1999, Shri. G.P. Pradhan resigned on 8.12.1999, Father Debrato resigned on 10.11.2001, Shri. Baba Adhav resigned on 19.11.2001 and Smt. Pushpa Bhave's term expired in 2002. It would, therefore, appear that since September, 1999, there were never 7 trustees in place. The quorum required for the meeting of the trust, however, was 5 trustees. The situation evidenced from the facts narrated above shows that after September/October, 1999 there were never more than 4 trustees. No meeting of the Board of trustees could have been called and no business could have been transacted in the meeting of the Board of Trustees after September/October, 1999. Under Clause 5 of the trust deed (rules to be treated as trust deed) there are four classes of members of the trust, namely, trustee members, life members, annual members and district representative members. Only the trustee members are entitled to be the members of the Board of Trustees (Executive Committee). Further, all categories of members can be enrolled only by the Board of Trustees, and as stated earlier, the Board of Trustees required for their meeting minimum 5 members as the quorum. Therefore, after September/October, 1999 no member, including the trustee member, could be enrolled,

since as stated earlier there were no more than four trustee members after September/October, 1999.

70) Therefore, it will have to be held that all transactions made by the trust after September/October,1999 till date, were illegal in as much as they were neither according to the Trust Act nor according to the rules of the trust.

71) As regards the period between 5.11.1997 till September/October, 1999, Shri. Baba Adhav has stated that regular meetings of the trustees were being held till 14.10.1998, while Shri. Hajare has stated that till 29.11.2002, there were meetings of the trustees, but many of the trustees were not attending the said meetings. Shri. Hajare has further deposed as follows:-

> "We were not appointing new trustees when the trustees resigned. However, it is only after all the trustees (except himself) resigned, that on 29.11.2002 a new Board of Trustees was appointed."

72) He has further admitted that between 1998 to 2001 only three trustees were there. He has also admitted that after 1998, none attended the meetings of the Board of Trustees. He has also stated that between 1998 to 2001, the Secretary had not convened any meeting of the Board of Trustees (para 12).

73) As far as the District Committees and the District Presidents were concerned, there are contradictory statements made by Shri. Hajare. In para 5 of his deposition, he has stated that since 1998 they started holding meetings of the District Presidents alongwith the meetings of the trustees, and all the decisions were taken in such meetings. Although there is no provision in the rules/trust deed, since 1997 till 1999 they used to appoint District Conveners. He has further admitted that according to the constitution of the trust, the District Convenors and the District Presidents were not supposed to perform duties of the trustees. He has then stated that he started the practice of holding meetings of the District Representatives along with the meetings of the Board of Trustees when the trustees were not attending the meetings. All these statements made by him not only bristle with contradictions but raise certain legal questions. According to law, the trustee members could be appointed only by the Board of Trustees, and as pointed out above, even according to Shri. Hajare's admissions, from 1998 onwards there were no more than 3 trustees at any time. According to his admission, further, the meetings of the Board of Trustees were never convened by the Secretary from 1998 onwards, and after 2001 except himself, there were no other

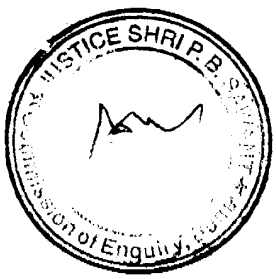
trustees. The Board of Trustees had never appointed the District Committees and their Presidents, who alone are recognised by the constitution, but not as full pledged members. They were to be treated as members so long as they continued to hold the office of the Presidents of the District Committees. He has also admitted that no trustees were ever appointed to the Trust. This means that atleast since 1998 onwards till date, the Trust was not functioning legally and could not have done so. The above discussion disposes of allegation Nos.(i), (iv), (vii) and (viii).

74) As regards the allegation that the expression "Bhrasthachar Virodh" (Anti Corruption) in the name of the trust is illegal, the applicant has relied upon a decision of the Assistant Charity Commissioner, dated 29.7.1999 and the decision of the Division Bench of the Aurangabad High Court in Writ Petition No.4610 of 1998 filed against it, and the subsequent circular of the Charity Commissioner, dated 6.12.1999 pointing out the said decision to the subordinate offices. The decision of the High Court rests on the contents of Section 20 of the Societies Registration Act, where the societies to which the Act is applicable are mentioned. However, the definition of "charitable purpose" under section 9 of the Trust

Act includes in sub-section 4 thereof "the advancement of any other object of general public utility". The expression "general public utility" would include such activities as a movement for the eradication of corruption, for which certainly the trust was established. However, there is nothing on record to show that the order of the High Court was appealed against. Hence, as things stand to-day, the order of the High Court is binding, and the Trust cannot operate with that expression in its name, after the decision of the High Court, unless it gets the decision reversed. However, since the Trust could not operate legally after 1998 for want of the requisite number of trustees, the decision, has not made any difference to the legality of the functioning of the trust.

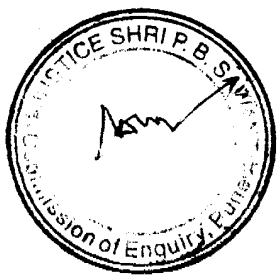
75) This discussion also disposes of allegation No.(ix).

76) The next allegation that the documents which are submitted for the registration of the trust and for keeping the accounts of the trust were illegal, is based on the fact that Father Debrato, who is named as the treasurer in the memorandum of association (which is to be treated as the trust deed for the purposes of the trust) was not available at the time of the registration of the trust, and had not signed the application for registration. Father Debrato has in so many



words, as pointed out earlier, stated that he was associated with the trust from its inception till 10.11.2001. The Trust Act does not require that all the trustees should sign the application for registration. In fact, even one individual can apply for registration of the trust. Secondly, although Father Debrato was not there at the time of the registration of the trust, it is not suggested that when he was appointed as the treasurer, which must be before the application for registration, he was not with the trust. Therefore, it cannot be said that his appointment as the treasurer was illegal. There is no doubt that Father Debrato has, on affidavit filed before this Commission, stated in so many words that he could not work as a treasurer and somebody else worked as a treasurer. However, he has not disowned the work done by somebody else as a treasurer. The work done by others as a treasurer will therefore be binding on him. Hence, so far as the trust is concerned, it cannot be said that till 10.11.2001, the work done by the treasurer was illegal. The allegation has undoubtedly some substance so far as the work of the treasurer after 10.11.2001 is concerned, and to this part of the allegation there is no reply from the opponent. It will have, therefore, to be held that the maintenance and keeping of the accounts after 10.11.2001 has not been according to the rules of the trust.

77) Coming now to the next allegation, namely, that the trust had collected money before its establishment, and all the moneys so collected were not shown in the accounts, the applicant has not furnished any details of the same. There is nothing on record to show that the opponent had collected a specific amount and that some portion of it was not shown in the accounts. On the other hand, it appears from the record that the opponent had shown Rs.1,97,44,402/- in the accounts of the year ending 31.3.1997 on the credit side. These accounts were of the period prior to the registration of the trust. The trust was registered, as has been pointed out earlier, on 5.11.1997. It appears that the opponent and others associated with the trust had taken the decision to start an Anti-Corruption Movement and had for that purpose started collecting money. After having collected some money, they had also decided to register the trust and for that purpose first they prepared the memorandum of association on20.5.1997 and thereafter registered the trust on 5.11.1997. They had, however, started collecting the money the moment they had taken the decision to launch the movement. The opponent has got the accounts audited for the period from the date of the decision to start the movement, till 31.3.1997, and they have been duly accepted. If



the opponent did not want to show the amounts collected prior to the registration of the trust, it was not obligatory on him to get the accounts of the money so collected, audited and submitted to the Charity Commissioner, as he has done. As pointed out earlier, the applicant has also not alleged that a specific portion of the amount so collected was not shown by the opponent in the audited accounts. We, therefore, find no substance in this allegation. This also disposes of the allegations Nos.(xv) and (xvii).

78) The next set of allegations of the applicant was that the trust had not maintained regular accounts, that the accounts were manipulated, that the expenses made were illegal in as much as monies were spent on matters which were not the objects of the trust. He has also contended in this connection that the reports of the auditor to that extent are incorrect. These allegations are vague and do not point out as to how and why the expenses were illegal. However, these allegations were not pressed and, therefore, it is not necessary to deal with them further.

79) The allegation that the District Committees appointed by the trust had collected some donations in the name of the trust, but were not accounted to the head office of

the trust, appears to have substance in it in asmuchas Sarvashri Salve and Ghorpade who were appointed by the trust to look into such allegations, so far as Satara, Sangli and Kolhapur districts were concerned, have also stated so in their report. Although, therefore, the applicant has not given any specific instances of the amounts so collected, and not accounted for, we will have to uphold this allegation.

80) The allied allegation was that the moneys were being collected on receipts, which did not bear the number of the registration of the trust. The donors' signatures were also not taken on the receipts nor were the signatures of those who collected the donations. This allegation has also some substance in it in respect of some receipts used for collection of donations. However, how many such receipts were used, and how much amount was collected on such receipts has not come on record.

81) The allegation that the audited accounts of the trust for the years 1998-99 to 2001-02 were not submitted to the Charity Commissioner on time, has not been refuted by the opponent.

82) The allegation with regard to the collection of money for petrol is not substantiated. The allegation has also

not been pressed, and hence, there is no need to deal with it further.

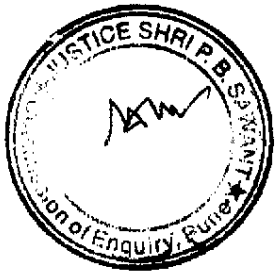
83) The next allegation is that in the accounts of the trust for the year ending 31.3.1998, an amount of Rs.75,000/- was shown as taken in cash from Ralegan-Siddhi Pariwar, and this amount was also returned to that institution in cash, both of which transactions are not according to law. Admittedly, the amount so taken was a loan without interest, and no interest was paid on the same. There is no doubt that the receipt of the amount as well as the payment of the amount in cash in excess of Rs.20,000/- is an illegality in view of the provisions of Section 2695S and 269T of the Income Tax Act. The transaction is also illegal since no permission from the Charity Commissioner was taken to take the loan as required by section 36A (3) of the Trust Act. The explanation given by the opponent is that there exists an informal organisation called Ralegan Siddhi Pariwar. It is neither registered as a trust nor as a society. This organisation has been formed by the villagers of Ralegan-Siddhi to give monetary assistance to who are needy, without charging interest. Accordingly, the trust was in need of money in the year 1998, and it was advanced the moneys by the said Pariwar. (Refer to the evidence of Shri. Tanurkar in Hind Swaraj Trust).

84) As regards the allegation that the opponent had removed the other founder-trustees illegally, it is not borne out by the evidence. On the other hand, it appears from the evidence that has come on record that the other trustees withdrew themselves from the trust for various reasons of their own and almost surrendered the institution to Shri. Hajare. Admittedly, the other trustees were in majority. As against one man, namely, Shri. Hajare, they had the majority. If they had acted unitedly, it was possible for them to run the institution according to their will. On the other hand, they allowed Shri. Hajare to run it. This is not a phenomenon, which can be called an illegal ouster of the other trustees by Shri. Hajare.

85) The other set of allegations relates to the constitution and working of the District Committees. Shri. Hajare has admitted in his deposition that it was for the first time that in the year 2000, the District Committees were formed and the District Presidents were appointed. As discussed above, it is evident that by the year 2000, only 4 trustees were left, namely, Father Debrato upto 10.11.2001, Shri. Baba Adhav upto 19.11.2001and Smt. Pushpa Bhave upto 2002. This is also admitted by Shri. Hajare. The record also shows that no meetings of the trustees were held after 1998.

Therefore, the District Committees, District Presidents and Taluka Committees were obviously appointed by Shri. Hajare alone. In fact, when 4 trustees left in 2000, no meeting of the Board of Trustees of the trust could have been legally convened thereafter, and it is not Shri. Hajare's case that any meeting of the Board of Trustees was convened after 1998. That also strengthens the conclusion that the District Committees, Taluka Committees and the District Committee Presidents were the creation of one man, i.e. Shri. Hajare (para 12 of his deposition). The operation of the District Committees, District Presidents and Taluka Committees was, therefore, the sole responsibility of Shri. Hajare.

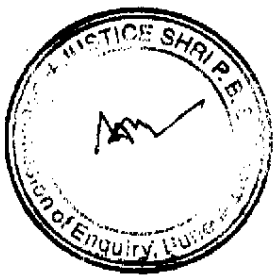
86) Shri. Hajare has admitted that the receipt books of the trust were distributed in the districts for collection of funds for the trust. The evidence further shows that most of them were lost. Although Shri. Hajare has stated that some money collected was received from the districts, there is nothing on record to show, how much money was collected at the district level and how much of it was received by the head office of the trust. Since, admittedly some receipt books were lost (exhibit 17 and 19) and as per Shri. Hajare's deposition in that behalf, the moneys collected as per the said receipt books are not



accounted for, the allegation will have to be accepted. It is also necessary to note in this connection that the persons who have filed the affidavits (exhibit 17) did so only when the observer sent by Shri. Hajare met them, and this was between September, 2003 to November, 2003 i.e. after the allegations in that respect were levelled against Shri. Hajare, and after the reference to the Commission was made. Therefore, it will have to be held that the conduct of the District Committees, in any case, so far as the collection of the fund was concerned, was not above board, and the report given by Shri. Salve, appointed by Shri. Hajare himself (exhibit 19), seems to have otherwise borne it out. That report together with the general complaints against the working of the District Heads of the trust, strengthen the allegation that it was not all well with the working of the trust in the districts. It is against this background that the allegations against some of the District Heads will have to be examined.

87) The allied allegation is that there were criminals in the District Committees, and some of them were also Heads of the Committees. To prove it, a list of the members of the District Committees with the details of the criminal cases against them is produced by the applicant (exhibit 20).

88) Shri. Balasaheb Nivruti Jagtap, the President of the Satara Taluka Committee was convicted of the offence of assaulting Shri. Pawar (Witness No.2, deposition exhibit 27), who was a bus conductor. Shri. Pawar himself was the office bearer of the Satara District Committee in the past. According to Shri. Pawar, Shri. Jagtap was working as a Linesman in Maharashtra State Electricity Board, and used to sign the muster for 7 to 8 days at a time and never attend the office. Since he was of a criminal tendency, his bosses did not ask explanation from him or take action against him. Shri. Jagtap used to visit the district and taluka government offices and tell the staff there, that he had received complaints of corruption against them and they should meet him in the evening to sort them out. Shri. Pawar has also stated that he had forwarded the complaints of the concerned staff to Shri. Hajare, but Shri. Hajare had not taken any action on them. He produced the copies of two letters, dated 1.4.1999 and 2.11.1998 (exhibit 28) written by him to Shri. Hajare against four persons, including Shri. Jagtap, complaining against their misconduct. He has also deposed that since Shri. Jagtap came to know of his complaints to Shri. Hajare, he assaulted him at the bus stand, for which he



was convicted by the Court. He has produced the decision of the Court at exhibit 29, in that behalf.

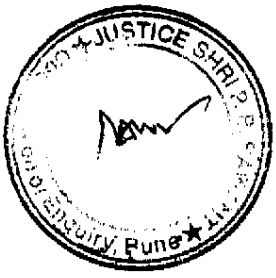
89) Shri. Pawar has stated that Shri. Mohan Sawant was the President of the District Committee and he was vending illicit liquor in his grocery shop. There were several cases filed by the police against him. However, though he promised to produce the record of the cases, he did not do so. On the other hand, he has admitted that Shri. Mohan Sawant had received 5 certificates (exhibit 33) for promotion of the cause of prohibition.

90) Shri. Pawar has also stated that one Shri. Sunil Gangadhar Naik was the head of the Satara City Committee. He was a sand- contractor and was arrested several times by the police for transporting more sand than was permitted to do. He has also produced the news appearing in daily newspaper "Aikya", dated 21.9.1998 (exhibit 30) in that behalf. However, it appears that this news relates to one Shri. Shailesh Naik, who is the brother of Sunil Naik.

91) Shri. Pawar has further stated that one Smt.Saphura Bhaldar was the president of the District Womens' Committee. She was dealing in kerosene, but was also doing black-market business in it.

92) It has, however, transpired in his deposition, that Shri. Pawar who is a bus-conductor was fined about 10 times by the superior authorities for short cash as well as for surplus cash in his hand. It has to be remembered that Shri. Pawar was the President of the Satara District Committee before Shri. Mohan Sawant was inducted in his place. Shri. Pawar has also admitted that he is an active worker of the Nationalist Congress Party since 1999, and knew Shri. Suresh Jain and had also felicitated Shri. Jain on his becoming the minister. He has also admitted that after he came out of Shri.Hajare's Anti-Corruption Movement, he had started his own Anti Corruption Movement, in the name of "Bhrashtachar Virodhi Yuvakkranti Jankalyan Samiti."

93) The next person against whom allegation is made is the President of the District Committee of Jalna, namely, Parasnand. There are two witnesses who have deposed about his criminal activities, one of them is Smt.Shakuntala Nandkishore Sharma (Witness No.16). She was a Member of the Legislative Assembly of Maharashtra during the year 1980 to 1995. Since January, 2003 she is a member of the Nationalist Congress Party. She has stated that the traders in Jalna City had complained to her several times that Parasnand was extorting



money from them under the threat of complaining against them to the police. According to her, she had forwarded the traders' complaint to Shri.Hajare, and had also asked the traders to lodge complaint against Shri. Parasnand with the police. She had also talked to Shri. Hajare twice on telephone about the traders' complaint. She had further complained to Shri. Jain on 9.5.2003 against Shri. Parasnand (exhibit 96). According to her deposition, there were atleast 30 to 35 criminal complaints filed against Shri. Parasnand, and in two or three of them, he was fined by the Court. She has also stated that Shri. Parasnand had encroached upon the land of the Babulnath Shiv Mandir, which land admeasures about 7 to 8 acres.

94) On the point of the grabbing of the land in question, we have the direct evidence of the priest of the temple, Shri.Dayashankar Sharma Salwala (Witness No.18). His wife lodged a complaint with the police on 10.10.1996 against Shri. Parasnand for having forcibly entered the temple. Shri.Dayashankar Sharma himself had also lodged a complaint with the police (exhibit 101) and filed a case before the Sub Divisional Officer against Shri. Parasnand and 12 others for the said offence. In that case, the S.D.O. has given a decision on 18.12.2001 (exhibit 100), by which he has referred the charges

with regard to the dispute about the land to the Civil Court, but has permitted him i.e. Shri. Dayashankar Sharma to perform the duties of the temple and to look after its management. It appears that inspite of this decision, Shri. Parasnand obstructed Dayashankar Sharma, and the witness has filed a complaint on 7.2.2002 to the police in that behalf (exhibit 109) and has asked for protection. It was suggested to the witnesses both, Smt. Shakuntala Sharma as well as Shri. Dayashankar Sharma, that Shri. Parasnand was not connected with Shri. Hajare's Anti-Corruption Movement. The witnesses, however, have asserted that according to their information collected from the newspapers, Shri. Parasnand was connected with the said movement.

95) Shri. B.D. Patil was Head at the relevant time of the Atapadi Taluka Committee of the Movement in District Sangli. Shri. Patangrao Gaikwad (Witness No.19) has deposed that he had sent complaint against Shri. B.D. Patil, both to Shri. Hajare and to the District Collector on 31.7.2003 (exhibit 103). The complaint was that Shri. Gaikwad had a dispute with his neighbour Kisan Sidram Gaikwad with regard to the sharing of water from the common-well. To resolve that dispute, Shri. B.D.Patil demanded Rs.15,000/- from him, and also represented

to him that he being the Chairman of the Taluka Committee of Shri. Hajare's Anti-Corruption Movement, he could also take action against him. It was suggested to the witness that there was a personal enmity between him and Shri.B.D. Patil because Shri. B.D. Patil had assaulted him. The complaint of the witness against Shri. Patil to the police made on 30.7.2003 in that behalf, is produced on record (exhibit 104).

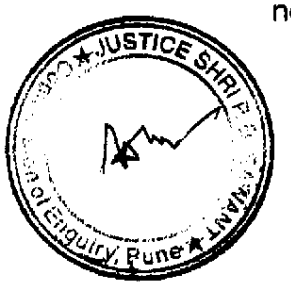
96) Shri. Mdhav Kkacheshwar Sanap was, at the relevant time the president of the Niphad Taluka Committee, District Nasik. Shri. Balasaheb Wagh (Witness No.12) had secured a one-room tenement under the Indira Awas Yojajna. Shri. Sanap represented to him that it is he who had secured the tenement for him through the Janandolan Committee, and demanded Rs.2,000/-. Since Shri. Wagh refused to pay him the money, Shri. Sanap threatened him with an assault by a pair of scissors. Thereafter Shri. Wagh put the facts on record on a stamp paper on 24.2.21999 (exhibit 71).

97) This witness is suggested that Shri. Sanap was never declared publicly as the President of the Niphad Taluka Committee by Shri. Hajare. However, the witness has denied the suggestion. On the other hand, according to the witness, a public meeting was held at Niphad in which Shri. Hajare himself

had declared Shri. Sanap as the President of the Niphad Taluka Committee.

98) Shri. Tekchand Sonadia was the General Secretary of the Nagpur District Committee of the Andolan. According to the witness Shri. Bhudev Wande (Witness No.11), Shri. Sonadia had in his capacity as such General Secretary, complained to the police on 16.4.2002 and 23.5.2002 against the traders (exhibit 65). Shri. Wande is the President of the Traders' Association of Mahadula (Koradi). According to him, the first complaint against the trader was that they sold adulterated goods, and the complaint was directed against 13 traders, whereas the second complaint was against 4 traders that they had sold kerosene illegally. According to Shri.Wande, Shri. Sonadia used to collect from him frequently Rs.200/- to Rs.400/- and he gave them to him as a friendly gesture. After he became the General Secretary of the Nagpur Committee, he started demanding Rs.5,000/- per month, and told him to collect the said amount from the traders. The witness, therefore, held a meeting of all the traders, and the traders declined to contribute any money for giving it to Shri. Sonadia, and when he told Shri. Sonadia accordingly, the next day a news-item appeared in the local daily newspaper "Lokmat Samachar" against the said traders. It

was stated therein that there was a demand for death penalty to the traders who were selling adulterated stuff. The news item further stated that the said demand of death penalty was made by the President of Nagpur Committee, one Shri. Koshor Chaduhary. The witness has deposed that on Shri. Sonadia's complaints, dated 16.4.2002 and 23.5.2002, the police had made investigation, but nothing wrong was found. Hence, he again made a complaint to the District Collector on 1.7.2002 (exhibit 66). Nothing came out of this complaint either. The traders' association thereafter, on 22.8.2002 gave an application (exhibit 67) to one Smt.Kumbhare, who was the Minister of State, Maharashtra Government. Smt. Kumbhare wrote five letters to five different persons in that behalf, and also to Shri. Hajare (exhibit 68) on 16.5.2003. Thereafter, it appears that Shri. Hajare had come to Nagpur, and the traders' delegation gave a representation to Shri. Hajare against Shri. Sonadia (exhibit 58), and Shri. Hajare assured the delegation that he would look into the matter. The news of the assurance given by Shri. Hajare appeared in the daily newspaper "Bhaskar" on 17.5.2003 (exhibit 59). According to the witness, nothing came out of this assurance given by Shri. Hajare, and in



the meanwhile he wrote a letter to Shri. Suresh Jain on 16.5.2003 (exhibit 69) in the matter.

99) The only suggestion made to this witness was that the witness is giving false evidence only to help Shri. Suresh Jain in his dispute with Shri. Hajare. It is not suggested to the witness that Shri. Sanodia was not connected with the Anti-Corruption Movement of Shri. Hajare.

100) The other witness examined on the same point is Shri. Dinesh Todwal (witness No.10). This witness is one of the traders belonging to that traders' association. He had made complaint to the police against Shri. Sanodia (exhibit 54). He has produced on record the letter dated 1.3.2002 written by the President of the Grocery Traders Association to the Police Inspector (exhibit 55). He has also produced the complaint made by him and others, to the Nagpur District Collector against Shri. Sanodia on 12.5.2003 (exhibit 52).

101) It is suggested to him, on behalf of the opponent that Shri. Sanodia was not the office bearer of the Janandolan. It was also suggested to him that Shri. Sanodia prepared his false letter-heads frequently. The witness admitted that on such false letter-heads, Shri. Sanodia made complaint against him and others to different authorities. The witness also admitted

that Shri. Sanodia had filed a criminal complaint against him and his brother with the police, for having assaulted him i.e. Shri. Sanodia, but the witness stated that the complaint was false. He has further himself brought on record a copy of the plaint (exhibit 61), in the suit which his brother has filed against Shri. Sanodia and Shri. Kishor Chaudhary for defamation, which suit is still pending. In the plaint (exhibit 61), the brother of the witness has stated that Shri. Sanodia was taking undue advantage of his self-created post of the General Secretary of the Andolan. Hence, the contention raised on behalf of Shri. Hajare that Shri. Sanodia was not the office bearer of the Andolan, appears to be correct.

102) Shri. Meghalal Shivanna Afasalwar (witness No.7) deposed before the Commission that one Shri. Kese Patil of Nanded had extorted from him Rs.10,000/- by representing to him that he was the President of the Maharashtra Branch of Akhil Bharatiya Bhrashtachar Nirmulan Samiti, and in that connection he has also produced the complaint (exhibit 46) made by him to the police against Shri. Kese Patil. It was suggested to him on behalf of the opponent that Shri. Kese Patil was not connected with this Andolan, and he was asked whether the orgarisation to which Shri. Kese Patil belonged, and Shri.

Hajare's organisation, were not different? To this question, he pleaded ignorance. It is doubtful whether Shri. Kese Patil belongs to the opponent's organisation.

103) It is not disputed that one Shri. Hemchandra Kale is the President of the Jalgaon District Committee of the Andolan. In all four witnesses, including Shri. Suresh Jain, have deposed against Shri. Hemchandra Kale, that he is a blackmailer and extortionists, who had fleeced the people by representing himself to be the office bearer of the Andolan. The first witness in this behalf is Shri. Suresh Jain himself. Shri. Suresh Jain has brought on record two letters written by Shri. G.P. Pradhan, to Shri. Hajare (exhibit 11), in which Shri. G.P. Pradhan after pointing out that Shri. Kale had made wild allegations against the North Maharashtra University, Jalgaon, had recommended his removal from the District Committee. However, he was never removed.

104) The other witness examined is Shri. Purushottam Patil (Witness No.6), the Chairman of the Jalgaon Peoples Co-operative Bank. He has produced two complaints filed by Shri. Kale against him in the Court of the Chief Judicial Magistrate, Jalgaon (exhibit 40) and the order passed by the Magistrate on both of them, dismissing them for default in appearance as well

as on merits, without issuing process. He has also produced the copies of six complaints made by Shri. Kale against the Bank to different authorities (exhibit 41). According to him, in view of these complaints, the concerned authorities made a thorough investigation of their bank and nothing irregular or illegal was found in the affairs of the bank. He has further deposed that he wrote a letter to Shri. Hajare (exhibit 43) complaining against the activities of Shri. Kale and also asking Shri. Hajare to let him know whether Shri. Kale was given an authority to make false allegations and complaint against any institution. No reply was received from Shri. Hajare to this communication. The witness also produced a copy of the complaint against the Commissioner of Co-operation and his inward clerk (exhibit 44) filed by Shri. Kale before the Chief Judicial Magistrate, and the decision on it. The complaint was dismissed for default in appearance of Shri. Kale as well as for want of sanction for the prosecution against the two government servants.

105) It is interesting to note that as deposed to by this witness, one Shri. Tripathi had sometime at the end of the year 1998, given him a telephonic call and asked him to give a loan of Rs.5 lacs to Shri. Kale. The witness told Shri. Tripathi that Shri. Kale should make a regular application for loan, and it will

be considered on merits. Upon this, Shri.Tripathi told him that if the witness gave a loan of Rs. 2 lacs to Shri. Kale, all the cases filed against him will all be withdrawn. The witness declined to do so, and upon this Shri. Tripathi threatened him with more cases against him i.e. the witness. In the cross-examination, the witness was asked as to whether he had made complaint about the phone received from Shri. Tripathi to the police, and the witness stated that he did not do so, as he did not feel it necessary to do it. It was then suggested to him that Shri. Kale had made complaints against him in his capacity as a member of his bank and not as an office bearer of the Andolan. This suggestion was denied by the witness, and he asserted that Shri. Kale had made complaint as an office bearer of the Andolan. It may be noted here that out of six complaints comprised in exhibit 41, two are signed by Shri. Kale among others, also as the President of the District Committee of the Andolan, whereas the rest of the complaints are on the letterhead showing Shri. Kale as the President of the District Committee of the Andolan.

106) The other witness examined against Shri. Kale is Shri. Ramesh Rajaram Patil (witness No.8). He has produced at exhibit 48, a press statement given by Shri. Kale as published in

the daily newspaper "Lokmat" on 17.1.1998 and also the reply given by the witness in the issue dated 30.1.1998 of the same newspaper. The statement given by Shri. Kale shows that Shri. Kale had alleged that one Umraosing Diwansing Patil, a member of the community organisation of the witness, had secured promotion in the Maharashtra Rajya Krishi Gramin Vikas Bank by representing that he was a Rajput-Bhamata, which is classified as a Nomadic Tribe, when, in fact, he was a Hindu Rajput, which caste falls in the general category. It was suggested that the witness had complained against Shri. Kale for the said statement. It appears, according to the witness, that Shri. Kale had thereafter filed a complaint for defamation against the witness in the Court of the Chief Judicial Magistrate, Jalgaon. The witness has produced a copy of the said complaint alongwith the order passed thereon (exhibit 49). According to the order passed by the Magistrate, the complaint was dismissed after issue of the process, for default of the appearance of Shri. Kale.

107) The next witness examined against Shri. Kale was Shri. Pandurang Govinddas Patil (Witness No.9). He had sent a letter dated 10.6.1998 to Shri. Hajare complaining against Shri. Kale (exhibit 51). He is the President of the Erandol Branch of

Rajput-Bhamata Samaj. In this letter, he had complained that Shri. Kale was making complaints against the members of his community for giving allegedly false caste certificates for securing employment etc. and this had brought his community in disrepute. He had, therefore, requested in the letter, that Shri. Hajare should warn Shri. Kale properly. He had also filed a criminal complaint (exhibit 52) against Shri. Kale for personal defamation, and the defamation of his community. That complaint is still pending before the Judicial Magistrate, Erandol. In his examination by the Commission the witness stated that Shri. Kale had demanded rupees one lac from one Shri. Umraosing Patil of his community after the witness had made complaint to Shri. Hajare, and had filed the complaint in the Court. To the question whether he had made a complaint to Shri. Hajare against Shri. Kale's demand of rupees one lac, he stated that since the President of the District Committee of their community had made a complaint to Shri. Hajare, he did not do so.

108) Another witness examined against Shri. Kale was Shri.Balasaheb Saindane of Jalgaon. He is the President of the Adivasi Tokari Koli Samaj, which is a scheduled tribe. He has produced at exhibit 78, (collectively), the copies of the

complaints filed by Shri. Kale against five persons belonging to his community and the decision in the said complaint as well as the decision in the revision. These complaints filed by Shri. Kale were in respect of the alleged false caste certificates obtained by the said five persons. It appears that this complaint was dismissed for want of sanction of the government for prosecution and also in default for appearance of the applicant. The revision filed against the order was withdrawn by Shri. Kale.

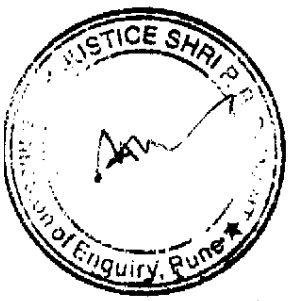
109) The witness had written a letter to Shri. Hajare in that matter on 12.6.2003 (exhibit 79). This letter was not replied to by Shri. Hajare. He has also produced a news report appearing in the issue dated 5.2.2000 of the daily newspaper "Deshdoot" in which a part of the press statement issued by the vice-chancellor of the North Maharashtra University is published alongwith the statement made by the witness to the effect that the defamation of the vice-chancellor would not be tolerated and a mass agitation would be launched against it. He has further produced the letter dated 17.2.2001 written by the vice-chancellor of the said University to him (exhibit 81). The letter thanks the witness for taking up the matter of his defamation. It was suggested to him that he was deposing before the Commission at the instance of Shri. Suresh Jain, which, of

course, he denied. However, he admitted that be belonged to the Nationalist Congress Party.

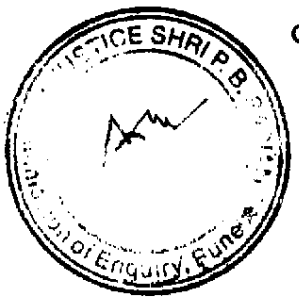
110) Shri. Kale was examined on behalf of Shri. Hajare in the inquiry proceedings against Shri. Suresh Jain and was cross examined at length. The evidence that has come on record in that examination, in so far as it is relevant for our present purpose, is worth reproducing here. In his examination, he has admitted that he takes for contract-farming about 10 to 20 acres of land every year, and makes a net earning between Rs. 1/- to Rs.1.5 lacs. He has stated there that he had never made any complaint against the vice-chancellor of the university, but had complained against the Registrar of the University, first to the vice-chancellor and then to the Governor (para 5). He has further deposed that on the basis of the complaint made by Shri. G.P. Pradhan against him, Shri. Hajare had appointed an inquiry committee. However, he has not told us as to what was the result of the said inquiry. He has admitted that he had filed in all 6 to 7 complaints before the Magistrate and about 3 to 4 cases in the High Court, and all the cases filed before the Magistrate were dismissed for default in his appearance. According to him, the cases before the Magistrate were dismissed because the co-operation from the lawyer was not

forthcoming and also because the purpose for which the cases were filed, was otherwise fulfilled. He, told the Commission that he was twice honoured as the "Ideal Worker" by Shri. Hajare.

111) Shri. Sanjay Surve was prominent worker associated with the Andolan in New Mumbai. Two witnesses have deposed against his illegal/irregular activities as such worker. The first witness is Shri. Manohar Madvi (Witness No.3, exhibit 31). He is the Corporator of New Mumbai Municipal Corporation and also a contractor by business. From his evidence it appears that Shri. Sanjay Surve had secured a building- contract from the Central Government, and Shri. Madvi was the sub contractor in the said contract. Shri. Surve had issued 10 cheques, each of Rs.1.70 lacs, five of them were dishonored and the payment of the rest five was stopped, obviously by Shri. Surve. Shri. Surve's uncle Shri. Papa Surve, according to this witness, belongs to Shri. Arun Gavli's group and Shri. Papa Surve threatened him on mobile phone against taking action against Shri. Sanjay Surve. He also asked him to forget about his moneys, or otherwise his life was in danger. The witness, therefore, complained to the police. The police gave him protection of an armed guard, for which he has to pay Rs.18,000/- per month. He then filed a criminal



complaint against Shri. Sanjay Surve in the Court. In that complaint, Shri. Surve was arrested and released on bail. Shri. Surve then started threatening the witness that he being an office bearer of the Andolan, he would get the witness involved in other cases. He, therefore, approached the police and the police told him to make compromise with Shri. Surve since he was an activist of the Andolan. He then made complaint to the Magistrate against the said threats, and the Magistrate directed the police to investigate the matter. The police then arrested Shri. Sanjay Surve and released him on bail. The complaint filed by the witness before the Magistrate and the direction given by the Magistrate on the same, are at exhibit 32. The witness has further deposed that he had made complaint in the matter to Shri. Hajare. He has further stated that Shri. Surve had produced a false bank guarantee of the Bank of Maharashtra for an amount of Rs.5 lacs, and had furnished the same to C.P.W.D. at the time of securing the building contract. When C.P.W.D. made inquiry with the Bank of Maharashtra, they denied having issued any such bank guarantee to Shri. Surve's company "Vishwakarma Construction Company". He had reported this incident also to Shri. Hajare. However, Shri. Surve still continues to be the active worker of the Andolan.



112) It was suggested to this witness on behalf of the opponent, that Shri. Surve was never appointed as an office bearer or worker of the Andolan. The witness denied the suggestion. To the Commission's question, however, the witness admitted that he had no evidence to show that Shri. Surve was the activist of the Andolan beyond what was appearing with regard to Shri. Surve in the newspaper, and amongst the information which was appearing in the newspaper was one which showed that Shri. Surve was sitting with Shri. Hajare, when Shri. Hajare was on fast. He has further stated that he was elected as a corporator of the New Mumbai Municipal Corporation in March, 2000, and 6 months before the election, he had joined the Nationalist Congress Party. He has also admitted that in the complaint, which he had filed before the Magistrate, he had not stated that the police was not accepting his complaint because Shri. Surve was the activist of Shri.Hajare. He has stated that he had friendly relations with Shri.Surve, and yet when he had taken the sub-contract under Shri. Surve, he i.e. Shri. Surve had not told him that he was the activist of the Andolan. He has also stated that he had complained against Shri. Surve, also to Shri. Suresh Jain, while the latter was on fast.

113) The other witness against Shri.Surve is one Shri. Vivek Rajprasad (Witness No.5). He is an agent of the Life Insurance Corporation, Housing Finance. He came to be acquainted with Shri.Surve, and Shri. Surve approached him for a housing loan in November, 2002. He wanted a loan of Rs. 7 to 9 lacs from the L.I.C. Housing Finance. On scrutinising the papers submitted by Shri. Surve for securing the loan, the documents were found to be bogus and, therefore, the loan was not sanctioned. Shri. Surve had given this witness a cheque of Rs.7,000/-, which bounced, and when he approached Shri. Surve for the amount, Shri. Surve threatened him saying that he is the President of the Andolan. He (Surve) also told him that if he made any more demand, he would be arrested as he had enough influence for the purpose. Thereafter, the witness filed a complaint against Shri. Surve in the Court of the Magistrate under sections 420, 465, 466, 467, and 468 of the Indian Penal Code. The copy of the complaint is on record at exhibit 38.

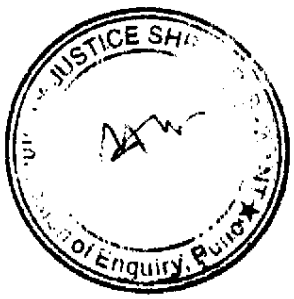
114) In his cross-examination, the witness admitted that he had not verified whether Shri. Surve was the President of the Andolan. He also admitted that in the complaint filed before the Magistrate, he had not stated that Shri. Surve was threatening him in the name of the Andolan.

115) The other activist of the Andolan was Shri. A.K. Patil i.e. Appasaheb Kalgude. He was, according to witness Shri. Suresh Anant Thorat, the President of Hatkanangale Taluka Committee of the Andolan. Shri. A.K. Patil had made a complaint against Shri. Salokhe, the Range Forest Officer, Kolhapur, for his alleged corruption, and for having got executed a low quality work in constructing bunds. The other allegation made against Shri. Salokhe by Shri. Patil was that Shri. Salokhe had presented vouchers for the purchase of cement worth Rs.6 lacs, although no cement was purchased. Shri. Thorat caused the inquiry to be made by a Deputy Conservator of Forest, Shri. G.K. Prakash, into the said allegations. In that inquiry, Shri. A.K. Patil stated in writing that the complaint in question was not made by him nor had he signed it. Thereafter the complaint was dropped. Shri. Thorat then complained to Shri.Hajare about the bogus complaint and also to the Police Superintendent, Kolhapur. The report of the Deputy Conservator of Forest dated 31.12.2002 is at exhibit 74. In his cross-examination, Shri. Thorat has stated that they had ascertained that Shri. A.K. Patil was the Chairman of the Hatkangale Committee of the Andolan. He has also stated that some employees of the department had made complaint against

Shri. Salokhe on account of their internal enmity. It appears that the complaint made to Shri. Hajare did not draw any response from him, whereas there is no information with regard to the progress of the complaint made by the witness to the Superintendent of Police, Kolhapur.

116) This shows that the Andolan was being abused by some persons to settle their private scores.

117) According to Shri. Vijay Dabhade (Witness No.15), one Shri. Satish Shetty was the organiser of the Pune District Committee of the Andolan. According to Shri.Dabhade, he is a practising lawyer and resides at Talegaon-Dabhade. He practices in the courts of Pune and Vadgaon-Maval. He had filed two criminal complaints and one suit against Shri. Shetty, on behalf of his client Shri. Padwal, for his defamation. Angered by this, Shri. Shetty abused him by visiting his office and also assaulted him with stones, on 27.11.2001. He immediately went to the police station at Talelgaon-Dabhade and tried to lodge complaint against Shri. Shetty. Initially, the police officer incharge was not willing to register the complaint and he told him that he would have to face heavy weather if he filed complaint against Shri. Shetty since Shri.Shetty was an activist of the Bhrashtachar Virodhi Andolan. On persuasion, the officer



registered a non-cognizable offence and about 13 days thereafter the police registered a cognizable offence against Shri.Shetty and arrested him. He was later released by the Court on bail. About a month and a quarter thereafter, the police station registered a complaint against Shri.Dabhade on behalf of Shri.Shetty. Thereafter, on 30.5.2002, the Assistant Police Inspector Shri. Gaikwad attached to that police station, came to the Vadgaon-Maval Court and abused Shri.Dabhade, and therefore, Shri.Dabhade lodged a complaint against Shri. Gaikwad at the police station of Vadgaon-Maval and also made a complaint to the Court.

118) Shri. Shetty had lodged a complaint against the witness in the Bar Council (exhibit 83). The witness had also made a complaint to Shri. Hajare against Shri.Shetty on 5.6.2002 (exhibit 84). The witness also sent to Shri.Hajare the documents relating to the offences committed by Shri.Shetty (exhibit 86, collectively).

119) The witness has deposed that the Bar Council of Maharashtra dismissed the complaint filed by Shri. Shetty against him. The witness produced the letter dated 8.4.2004 (exhibit 85) written to him by one Shri.Jagtap, the Joint Secretary of the Pune District Committee of the Andolan, in

which he had stated that Shri. Shetty was the organiser of the Pune District Committee of the Andolan for one year in 2002. He was removed as such organiser on 9.4.2003, but he is a member of the Taluka Committee of the Andolan since 1.1.2003.

120) It further appears that the witness had written two letters, dated 28.3.2004 and 5.5.2004 to Shri.Hajare against Shri. Shetty (exhibit 87). It was brought on record that on 18.3.2004, Talegaon-Dabhade Municipal Council filed a complaint against the witness with the police, at the instance of Shri.Shetty (exhibit 88) for an unauthorised construction made by his wife. The witness, however, denied any knowledge of this complaint. The Municipal Council on 17.3.2004 sent a notice on the application of Shri.Shetty, to the witness's wife for illegal water connection. The witness replied to the said notice, and pointed out that the construction was legal, and thereafter no further action was taken in this connection. The witness was confronted with the letter dated 21.1.2004 (exhibit 90) written by the Municipal Council for the unauthorised construction. The witness denied knowledge of any such notice. The witness was shown the complaint dated 31.1.2004 filed by the Chief Officer of the Council with the Police Sub-Inspector against the witness, in which it was alleged that the witness had abused him and

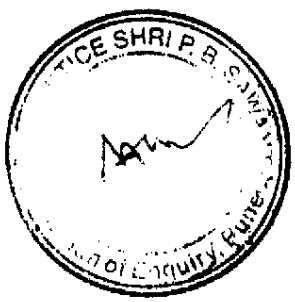
threatened him with killing. According to the witness, this complaint was made because earlier the witness had made complaint against the Chief Officer of the Municipal Council, to the Collector, for non-payment of his legal fees. The witness was also shown a letter by the Maharashtra State Electricity Board to his wife written on 16.1.2004 (exhibit 92) for having taken electricity connection in her house which was constructed unauthorizely. The witness replied that he had obtained a stay from the Court against the M.S.E.B. The witness was also shown a letter (exhibit 93), dated 3.6.2002, whereby the Assistant Police Inspector of Talegaon-Dabhade Police Station had made a complaint to the President of the Bar Association of Vadgaon-Maval with copies to the Bar Council, complaining against him that he was not co-operating in the investigation in an offence registered against him. According to the witness, he was never informed of any such complaint made against him and registered in the police station, nor was he ever called to the police station for the purpose of investigation in the matter.

121) It has come on record that in the complaint filed by the witness against Shri.Shetty for assault on him, Shri. Shetty was acquitted. However, according to the witness, a revision against the said order of acquittal is pending in the High Court.

122) Shri. Dabhade's evidence shows that the land on which his house stands is shown in the records, in the name of the Railways. If this is so, then obviously the construction of his house is unauthorised. It is not Shri.Dabhade's contention that for constructing the house either old or new (as renovated by him), a sanction was obtained from the Municipal Council. If this is so, then the relevant complaints made by Shri. Shetty to the Municipal Council, to the M.S.E.B. and to the police, cannot be said to be unjustified. It cannot also be alleged that Shri.Shetty as an organiser of the Andolan was doing anything illegal when he made the said complaints. It may be that as stated by Shri.Dabhade, all these complaints were motivated by the fact that as an advocate, he had filed on behalf of his client, two criminal complaints and a suit for defamation, against Shri. Shetty and thereafter the whole process of notices by the various authorities against him and his wife started. But, certainly Shri.Shetty's action in that behalf cannot be held to be objectionable.

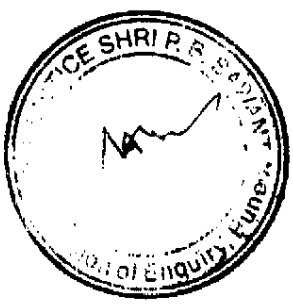
123) It is not denied that one Shri. Ganpatrao Awati of Ralegan-Siddhi is an activist of Shri. Hajare's Andolan. Shri.Laxman Damodar Ingale of villalge Charangaon, Taluka - Patur, District - Akola (witness No.4) has stated that on reading

about the proceedings before the Commission, he had come to depose before the Commission, against the said Awati. According to him, he was working as a helper in Century Rayon Company, situated in Thane district. He was laid off by the company in the year 1984 on account of the lock out declared by the company. Thereafter, the company started re-functioning and, therefore, he approached the company for employing his son as a labourer. His son was not given employment, and he suspected that it was on account of corruption. He, therefore, approached Shri. Hajare. On the day he visted Ralegan-Siddhi for the purpose of complaining to Shri.Hajare, he found that Shri.Hajare was observing "Maunvrat" (Day of silence) on that day. Shri. Hajare was, however, present in Yadavbaba Mandir amongst about 30-40 persons who had come to visit him. He handed over his written complaint to Shri. Hajare. Shri. Hajare signed in acknowledgement of the receipt of the copy of the said letter and pointed him to Shri. Awati who was at that time standing opposite the door of the temple, regulating the incoming visitors. Shri. Awati took the witness to a corner of the temple and told him that he should give him Rs.25,000/- and thereafter he would get the work done from "Saheb" i.e. Shri. Hajare. The



copy of the letter handed over by him to Shri. Hajare addressed to Shri. Ajit Pawar, is part of his affidavit (exhibit 36) filed before this Commission. Shri. Ingale thereafter complained to Shri. G.P. Pradhan about this incident, and the demand of Rs.25,000/- by Shri. Awati. To that, Shri. Pradhan replied by his letter 21.5.2003. This reply received from Shri. Pradhan is part of the affidavit. It is not denied on behalf of Shri. Hajare that Shri. Awati is the activist of Shri. Hajare's Andolan. All that has been put to Shri.Ingale is that he had not met Shri. Awati on that day at Ralegan-Siddhi nor had Shri. Awati demanded the said amount. It is also sought to be suggested that Shri. Hajare was not observing Maunvrat on that day.

124) Looking at the contemporaneous documentary evidence on record, the demeanour of the witness and the version given by him of the entire episode, it will have to be concluded that his version that Shri. Awati had asked him for the amount of Rs.25,000/- to process his application, has a good deal of substance in it. Shri. Hajare has admitted that Shri. Awati was his associate and was also the activist of the Andolan. In fact, according to Shri. Hajare, he used to be with him on his tours. This only shows that even those activists who were nearer to Shri. Hajare were indulging in corruption and demanding



money from the supplicants who came for relief to Shri. Hajare. Shri. Ingale was a manual worker. He had come all the way to the Commission to depose before it in respect of his own personal experience. He had no axe to grind nor is it suggested that he had come at the instance of anyone. The Commission, therefore, has to accept his version that Shri. Awati had demanded the moneys from him as stated by him.

125) When asked about the allegation made by Shri. Ingale, Shri. Hajare only stated that he had asked about it to Shri. Awati, and Shri. Awati had denied it. He admitted that he had not called Shri. Ingale for the purpose of the inquiry into Shri. Ingale's complaint against Shri. Awati.

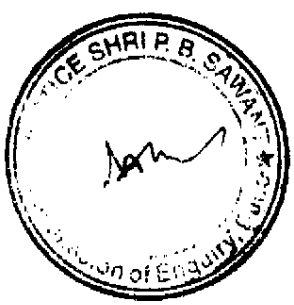
126) In this connection, it is also necessary to note that Shri. Hajare has admitted that on the complaint received against the Kolhapur District Committee, he had appointed an observer, Shri. Salve, and on Shri. Salve's report, the whole committee was dissolved. Shri. Hajare, however, did not take any action against Shri. Hemchandra Kale of Jalgaon inspite of several complaints against him. In this connection, the letter written by Shri. Saindane (Witness No.14) to Shri. Hajare (exhibit 79), with which letter Shri. Saindane had forwarded all the copies of the various complaints filed by Shri. Hemchandra

Kale against different persons, was not even seen by Shri. Hajare. He stated that the said letter was not shown to him. This shows that from time to time the complaints against his activists were brought to his notice, and he was alerted about their activities. But he had failed to act upon the said complaints, which appears to have given some activists a free hand for misconduct.

D) **KRISHNA PANI PURAVATHA YOJANA SAHAKARI SANSTHA**

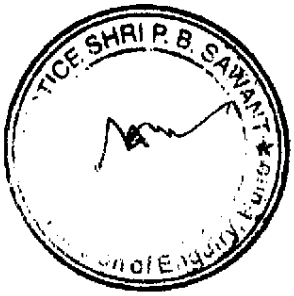
127) The institution was a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960. It was established on 17.6.1986 with the primary object of supplying water to its member- agriculturists. According to the bye-laws of the society, the water could be supplied for the purpose of agriculture and also for the consumption of cattle and human beings. In the arguments advanced on behalf of the applicant against the operation of this society, three points were pressed. The first was that Shri. Hajare remained on the committee of the society, although he was not qualified to remain on it after he sold his land in the year 2001 and continued to be without land till 2003, when he repurchased a part of the land which he had sold. The qualification for the

membership of the society laid down in bye-law No. 4 of the Society is that the member must possess land within the jurisdiction of the society and that he must undertake to wet the land with the water supplied by the society. The further condition was that the members' land would be chargeable as a security for the loan taken by the society for the project of the supply of water. It is admitted on behalf of Shri. Hajare, that Shri. Hajare had ceased to hold any land within the jurisdiction of the society for 2 years from 2001 to 2003, although initially he held the land, and it is only after 2003 that he again become the holder of some agricultural land. The dispute is with regard to the eligibility of Shri. Hajare as a member for the period 2001 to 2003. He was also the Chairman of the society during the said period. There is no explanation from Shri. Hajare as to how he remained Chairman of the Society when he had ceased to be an agriculturist within the jurisdiction of the society during the said period, and when he could not have remained even a primary member of the society during the said period. His functioning as a Chairman of the society during that period was, therefore, clearly illegal, being against the bye-laws of the society. It is true, as contended on his behalf, that the activities and operations of the committee could not be held to be invalid



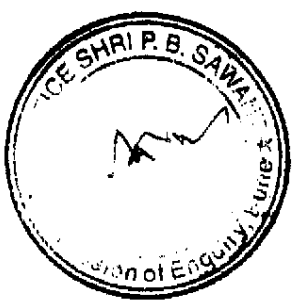
on that count only, in view of the provisions of Section 77 of the Act. But these provisions are by way of a saving clause, and that cannot be held as a shield for the lapse on the part of Shri. Hajare to observe the provisions of law.

128) The applicant's second contention was that the society had supplied water to Mahila Mandal and the students' hostels, one run by the Yadavbaba School and another by the trainees' hostel, belonging to the Yadavbaba Trust, contrary to the rules, and without charging any money for the same. The Mahila Mandal required water for its nursery, whereas the students' hostels required water for human consumption. The objection is to the supply of water for two months to these institutes, to be specific, in April and May, 2002 free of charge. The auditor of the society has pointed out that Rs.1,50,000/- were received from the Yadavbaba Trust for the use of water for the Training Centre, and Rs.70,000/- were received from the school-hostel. However, he has not mentioned any amount received from the Mahila Mandal, although Shri. Paralikar for Hajare, points out in his argument that Rs.21,000/- were, in fact, received from the Mahila Mandal for the water supplied to it. The amounts from the two hostels were received on 16.9.2003 and 17.9.2003. Although, Shri. Paralikar in his



argument has stated that these amounts were received as per the resolution of the general body of the society, he has not placed the resolution on record to support his contention. Further, there is nothing on record to show that even the general body had determined this amount according to any criterion. It, therefore, appears that the amounts were determined ad-hoc, if at all. It was necessary for the general body, even according to the auditor, to fix some guidelines for the supply of water to such institutes. To the extent that the water was supplied to these three institutes, though for a worthy purpose without fixing the criteria for determining the charges, it was done without following the bye-laws of the society. Atleast the managing committee of the society could have fixed the charges. However, looking to the purpose for which the water was supplied, the irregularity can be described as only a technical one. The month of April and May, 2002, were admittedly experiencing scarcity of water at the place. The monies received by the society for the supply of water from the two institutes for the two months cannot also be said to be inadequate taking all things into consideration.

129) As regards the third allegation that the society had not sent the compliance report of the objections raised by the



auditor for the period 1986 to 1993, there is no denial from Shri. Hajare that this was so. No document has also been produced before the Commission to suggest that the compliance was made. The allegation, therefore, will be deemed to have been proved. Undoubtedly, it is an irregularity on the part of the society. The applicant did not press any other allegation against this society, though they were made in the original charter of allegations.

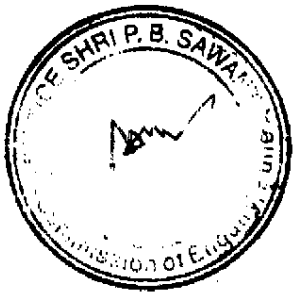
CONCLUSIONS:-

Hind Swaraj Trust

(i) The expenditure of Rs.2.20 lacs from the funds of the Hind Swaraj Trust for the birthday celebrations of Shri. Hajare was clearly illegal and amounted to a corrupt practice.

(ii) The alienation of the land admeasuring 11 Ares out of the land belonging to the Trust in favour of the Zilla Parishad without the permission of the Charity Commissioner, in contravention of Section 36 of the Bombay Public Trusts Act, though the alienation is invalid, was a case of maladministration.

Sant Yadavbaba Shikshan Prasarak Mandal

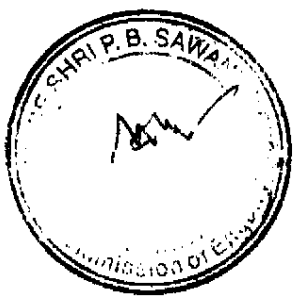


(iii) The non-submission of the budget of the Trust for all the years, except for the first year i.e. 1984, was a contravention of Section 31A of the Bombay Public Trusts Act and the non- submission of the audited accounts in time for the years 1982 to 2002 was a contravention of Sections 32, 33, 34 of the said Act r.w. Rule 21 of the Rules made thereunder. They are the instances of maladministration.

(iv) The repayments of the handloans taken from the trustees, above Rs.20,000/-, in cash, were in contravention of Section 269T of the Income Tax Act and were, therefore, acts of maladministration.

(v) The acceptance of the handloans, in cash, from the parties other than the trustees, and their repayment in cash were both against law and, therefore, were acts of maladministration.

(vi) The purchase of the three pieces of land, namely, Survey Nos. 602, 603 and part of Survey No. 604 of village Ralegan-Siddhi and the construction made thereon, were not reported to the Charity Commissioner as required by Section 22 of the Bombay Public Trusts Act. This was an irregular act amounting to maladministration.



(vii) The amount of Rs.1,00,000/- given to the Swami Vivekanand Krutadnyata Nidhi as loan and without interest was contrary to the objects of the Trust and, therefore, an illegality.

(viii) The amount of Rs.46,374/- spent on the renovation of Yadav Baba temple was contrary to the objects of the Trust. The amount would be spent only on education and that too secular education. Both the objects were defied by the said expenses incurred on renovation of Yadav Baba temple and therefore, constituted illegalities.

(ix) In as much as, the Trust was depositing its amounts in the non-scheduled banks, namely, Parner Taluka Sainik Sahakari Bank and Adarsha Gramin Bigar Sheti Patsanstha Maryadit, in contravention of Section 35 of the Bombay Public Trusts Act, the Trust was guilty of maladministration.

(x) Since the accounts of all the divisions of the Trust were not consolidated and submitted to the Charity Commissioner for some of the years as pointed out above, the Trust was guilty of maladministration.

(xi) In as much as the source of the amount of Rs.2 lacs which was invested in a fixed deposit with the Parner Sainik

Sahakari Bank Maryadit has not been explained, the transaction is a case of maladministration.

The Trust is also unable to explain where the interest on the said fixed deposit of Rs.2 lacs for about 7 months has disappeared. This is also a case of maladministration.

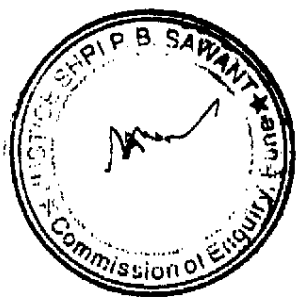
(xii) To the extent that the Trust has spent Rs.17.85 lacs from its own funds on the hostel belonging to the Hind Swaraj Trust, it has clearly committed a violation of law. This act also amounts to maladministration.

(xiii) Shri.Hajare has not explained as to why a separate joint account in his name and in the name of one Dagdu Kisan Mapari was kept in the Adarsha Gramin Bigarsheti Sahakari Patsanstha. This amounts to a clear irregularity and is, therefore, an act of maladministration.

Bhrashtachar Virodhi Janandolan Trust

(xiv) The Andolan was not registered legally as a Society under the Societies Registration Act. This is an act of maladministration.

(xv) The Andoaln could not act as Trust legally after 1998, since it did not have the minimum number of trustees, according to the trust deed, to operate as the Trust. It also did not have the minimum number of trustees to form the quorum



since October,1999. All the acts of the Andolan as the Trust, after 1998 were, therefore, illegal. There was thus a patent maladministration in the functioning of the Trust.

(xvi) After Father Debrato resigned as a treasurer on 10.11.2001, the maintenance of the accounts of the Trust has not been according to the rules. This was an act of maladministration.

(xvii) There was no control over the collection of funds by the District Committees, their expenditure and the contribution they were supposed to make to the headquarters. This amounted to maladministration.

(xviii) The non-submission of the audited accounts of the Trust to the Charity Commissioner in time, for the years 1998-99 to 2001-02 was violative of Sections 32, 33 and 34 of the Bombay Public Trusts Act and hence amounted to maladministration.

(xix) The receipt of Rs.75,000/- as a loan, in cash, from Ralegan-Sidhi Pariwar and the repayment of the said loan to them, again in cash, were both acts contrary to the provisions of the Income Tax Act. The receipt of the loan without the permission of the Charity Commissioner was contrary to the

Bombay Public Trusts Act and hence both constituted illegalities and acts of maladministration.

(xx) The appointments of the District Committees by Shri.Hajare after 1998 and the operation of the said District Committees as the Committees of the Trust, were both illegal, and were acts of maladministration.

(xxi) The most of the receipt books issued to the District Committees were lost. There was also no account of the funds collected by the District Committees. This was a case of patent maladministration.

(xxii) Some of the workers in the Andolan were abusing the platform of the Andolan for anti-social activities, such as, extortion of money, blackmailing, grabbing the properties of others, harassment, goondaism, corruption etc. Although Shri.Hajare denied that some of them were his workers, he could not deny that the others atleast were his own workers. These acts on their part were clearly criminal.

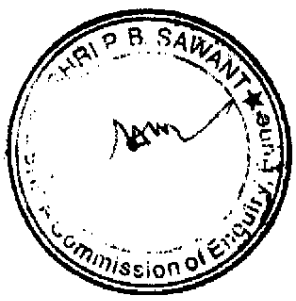
When the complaints were made against some of them, Shri. Hajare did not care to investigate them, and when he did inquire into some of them, he only heard his own workers without calling the complainants for the inquiry. This was highly unjust and irregular and amounted to patent maladministration

of the Andolan. It only shows that he did not take care to keep control over the anti-social forces, which his Andolan had released.

The Krishna Pani Puravatha Yojana Sahakari Sanstha

(xxiii) Although Shri.Hajare was not qualified to remain a member of the Society during the period 2001 to 2003 since he did not hold any land within the jurisdiction of the Society during that period, he continued to be the Chairman of the Society. This was patently illegal.

(xxiv) The supply of water to Mahila Mandal and two hostels, namely, Students' Hostel and RPK Hostel, in April and May, 2002 and not fixing the charges either before or after the supply, was irregular. The charges could have been fixed by the Managing Committee before the monies were received from the three institutions. That was not done, and instead ad-hoc sums of Rs.1.50 lacs and Rs.70,000/- were received from the two hostels respectively and a sum of Rs.21,000/- was received from the Mahila Mandal, which was irregular. This irregularity has not been cured till date by getting the approval atleast of the Managing Committee of the Society to the charges received from the three institutions, or by fixing the charges.



(xxv) There was no compliance of the objections pointed out by the auditor for the accounts of the period 1986 to 1993. This is an irregularity and amounted to maladministration.

Thus Shri. Hajare was guilty of the corrupt practice mentioned at (i) above and of the acts of maladministration mentioned in the rest of the conclusions.

Place: Pune

Date: 22nd February, 2005

[Justice P.B.Sawant (Retd.)]
Commission of Inquiry