



Government of Maharashtra

**REPORT**  
**OF THE**  
**COMMISSION OF INQUIRY FOR ENQUIRING**  
**INTO THE FAILURE OF THE PANSHET**  
**AND KHADAKWASLA DAMS**

**PART II**

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**PART II**

## PART II

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**PART II**

**SECOND TERM OF REFERENCE**

**VOLUME I**

## SECTION 1

## INTRODUCTORY

In this part, I propose to deal with the second term of reference, which is numbered as (b) in the notification viz., adequacy of the action taken by the various authorities before, during and immediately after the disaster to avert the same or to mitigate the consequences thereof. The phraseology of clause (b) relating to the second term of reference is very wide. Adequacy of the action by the various authorities has to be considered firstly in the context of averting the disaster. This action naturally would come before the occurrence of the disaster. Again, the adequacy of the action taken by the various authorities has to be considered in relation to the steps taken to mitigate the consequences of the disaster. The action in this connection would naturally follow the disaster. The adequacy of such action, however, has to be considered with reference to the time limit that is implicit in the expression "immediately after" contained in clause (b) of the notification. The expression "various authorities" implies that more than one department is concerned in taking action either for averting the disaster or mitigating the consequences thereof. It is possible to imagine that the action for averting the disaster before the same occurred could be taken by a certain set of authorities only. In this particular case, the action for averting the disaster before its occurrence, could be taken mainly by the irrigation authorities and the civil, revenue and police authorities would render such assistance as has been asked for by the irrigation authorities or as is called for by the circumstances prevailing. On the other hand, so far as the action taken immediately after the disaster for mitigating the consequences is concerned, such action could be taken mainly by the civil, revenue and police authorities (who will hereafter be called civil authorities for the sake of brevity and which expression will include civic authorities, i.e. authorities of the Poona Municipal Corporation) and the role of the irrigation authorities would be confined to giving information and guidance about the possible consequences of the breach of the dam. Whatever action the irrigation authorities would take would be in the nature of co-operation with the civil authorities.

Any judgment about the adequacy of the action taken by the appropriate authorities pre-supposes that there is a norm or a standard to which such action must conform. In other words, the first question to be considered is what action ought to have been taken by the appropriate authorities. After having arrived at a satisfactory standard of action, we can proceed to consider the sufficiency or insufficiency, the adequacy or inadequacy of the action actually taken by the appropriate authorities. When I am referring to a norm or a standard of action, I have not in view any rigid or hide-bound norm. The standard will depend upon the circumstances prevailing in a given situation. Whatever the difficulties in devising a standard or a norm, it is quite clear that unless we have any such norm or standard before our mind's eye, it would not be possible for us to assess the adequacy or inadequacy of the action taken by the appropriate authorities. Just as the question as to what ought to have been done has

to be considered, in the same way, the question as to what could have been done in the circumstances has also relevance in assessing the merits of the action actually taken. In brief, the frame of reference so far as this part is concerned, is wide and elastic and various aspects will have to be taken into account before passing a verdict or, to use a more appropriate expression, a "value judgment" on the action taken by the appropriate authorities.

We have then to consider the meaning of the word "disaster". Evidently, the word "disaster" is comprehensive to include several phenomena such as the breach of the dams, the consequent heavy floods and the damage done to the life and property both movable and immovable.

It has been strenuously argued by the advocate on behalf of the civil authorities which argument has been supported by Mr. Rege, Counsel for the Commission, at any rate so far as Divisional Commissioner, Mohite, is concerned, that none of the authorities, viz., revenue, police and civic, was under any legal obligation to take any action in regard to the floods, which cascaded the city of Poona on the 12th July 1961, and, therefore, this Commission has no jurisdiction to inquire into the adequacy of the action taken by these authorities. I do not propose to enter into a discussion about the legal position pertaining to these various authorities, because that is evidently beyond the scope of a fact-finding Commission. I would make a passing reference to the legal position of the Divisional Commissioner, because in answer to questions in cross-examination, Mohite contended that his role was that of an adviser or co-ordinator, though he had not put forward any such plea in his written statement. I do not however, propose to embark upon any discussion about the legal or constitutional liability of the other civil authorities. If the civil authorities hold the view that there was no legal liability on their part for taking any action in regard to floods, then, they should have been better advised if they had brought that position before the Government so that the Government would either have not appointed any Commission or having appointed the same would have appropriately restricted the scope of enquiry. At any rate, the Government might not have referred the second term of reference regarding the adequacy of the action to the Commission or would have withdrawn that term from the purview of the inquiry. If it only in the course of the written arguments that this point has been raised and for reasons explained above, I do not propose to offer any comments on the submissions made on behalf of the civil authorities in that regard.

It has also been contended by the Commission's Counsel as also the advocate on behalf of the civil authorities that the Commission has no power to consider the adequacy of the action taken by each of the officers individually. It is true that this is not an inquiry against any particular individual or individuals. But, when we are talking about the "action", we are not concerned with action in the abstract but we are concerned with the concrete action that has been taken. Naturally, the action may be either individual or collective. In taking a particular action or set of actions one individual may be concerned or may be responsible, while in taking another set of actions, more than one person may be responsible. Action

naturally means action by human agency. We have therefore, to consider the question, what action each of the authorities ought to have taken. In this connection, I would emphasize the expression "action by the various authorities" used in clause (b) of the notification. The word "authorities" might have been used in the sense of departments or branches of the administration such as, for instance, the revenue, police and municipal authorities. Even if this is so, still the action of an individual *vis-a-vis* the administrative branch to which he belongs will also have to be considered. It is the action of the individual or individuals as also the action of the various departments which is the subject-matter of scrutiny in this inquiry and it is idle to contend that the commission has no power to consider the individual action. Without considering the adequacy of the individual action, it is impossible to pass any verdict upon the adequacy of the action taken by the various authorities. If the Commission has no power to judge the sufficiency or adequacy of individual action, it must follow, as a logical corollary, that the Commission has no power to deal with the sufficiency or adequacy of the action taken at the instance of the various authorities. In this connection, it may be pointed out that the Commission did not start this inquiry against any authorities or officers of the Government as such. The public notice that was issued by the Bavdekar Commission called upon all persons acquainted with the subject-matter of the inquiry before the Commission and wishing to give expert or other evidence to forward to the Commission a statement of the evidence which they wish to give relating to the matter referred to the Commission. This Commission enlarged the scope of the public notice by adding the words "including concerned officers of the Government and public authorities". The relevant part of the public notice issued by this Commission runs thus :

"All persons including concerned officers of Government and public authorities acquainted with the subject-matter of the Inquiry before the Commission and wishing to give expert or other evidence shall forward to the Commission a statement of the evidence which they wish to give relating to the following matters....."

It will thus be seen that the public notice merely called upon persons acquainted with the subject-matter of the inquiry to submit statements on matters on which they wish to give evidence. This was not a notice calling upon any officers of the Government or any public authorities to submit explanations or to face inquiry on certain charges. It may be pointed out that none of the authorities (the irrigation or the civil) had submitted any statements before the Bavdekar Commission, probably because the words used in the public notice which was issued were general, viz., all persons acquainted with the subject-matter of the inquiry, etc. That is the reason why this Commission thought it necessary to add the words "including concerned officers of Government and public authorities". The addition of these words, however, did not change the complexion of the public notice. The notice will continue to be a notice calling upon persons acquainted with the subject-matter of the inquiry to submit their statements as a preliminary to giving evidence. No action against any authorities was contemplated or could be contemplated. Nor any particular department was



named in the notice. It is, however, significant to note that applications were submitted on behalf of the named irrigation officers and their subordinates as also specific civil officers and their subordinates stating that these officers were prepared to file written statements and to give evidence before the Commission and requesting that they should be permitted to appear through their respective senior counsel and advocates. Ex. 11 is the application for the twelve named irrigation officers and it is stated that Mr. H. R. Gokhale, senior Counsel, would appear on their behalf and also on behalf of their subordinates. This application was made on 12th January 1962. Ex. 12 is the application made on behalf of S. P. Mohite, Divisional Commissioner, Poona, Majeedullah, D.I.G., Poona Range, V. Prabhakar, Collector, M. S. Heble, D.S.P., Poona, S. B. Kulkarni, Municipal Commissioner, Poona, and their subordinates. Permission has been asked by these officers and their subordinates to appear through Mr. E. B. Ghasvala. This application was made on 28th December 1961. The Commission passed an order on 12th January 1962 (Ex. 15) allowing these officers to appear through their respective counsel and advocates. I am unable to understand why these officers appeared before the Commission through their counsel and advocate, if their contention is that the Commission has no power to inquire into the conduct of the individual officers. Representations could have been sought on behalf of the different departments such as, for instance, Irrigation Department, Police Department, Revenue Department and Poona Municipal Corporation or generally on behalf of Government. The ground on which representation was allowed to these officers was that they were interested persons and as such, it was necessary to allow them to appear through lawyers to put up their case before the Commission. At no time in the course of the proceedings was it contended that the conduct of the individual officers was not open to scrutiny by the Commission and for the first time in the course of the written arguments the question has been raised by the Commission's counsel and the advocate on behalf of the civil authorities. While it is true that this is not an inquiry on any specific charges against individual officers, it is idle to contend that the Commission cannot inquire into the adequacy of the steps taken by the individual officers. If their argument is accepted then the inquiry would be a futile farce.

## SECTION 2

ACTION TAKEN BY THE IRRIGATION AUTHORITIES FOR AVERTING THE DISASTER  
OF THE BREACH OF THE DAMS

So far as the action for averting the collapse of the dams is concerned, it is principally the irrigation officers whose conduct requires scrutiny. Of course, the civil authorities can render help, as has been done in the present case, to the efforts made by the irrigation authorities to save the dams from disaster. The main responsibility, however, rests upon the irrigation authorities. We have, therefore, to consider, first of all, what was the condition of the Panshet dam on the eve of the disaster; which circumstances caused danger to the dam and what attempts were made to avert that danger.

So far as the condition of the dam is concerned, it is undisputed that there were various components, which were incomplete. This aspect has been dealt with exhaustively in the first part, and only a brief reference will be sufficient for understanding the trend of the discussion to follow. The incomplete components were :—

(1) The designed height of the dam was RL. 2080. This height was not reached in the temporary waste weir section and the height at that part of the dam was RL. 2075. Uncompacted earth was heaped on this part with a view to raise the height and thus increase the free-board.

(2) Pitching was incomplete on the upstream face of the temporary waste weir section.

(3) The downstream retaining wall was not complete.

(4) The floor of the conduit remained unconcreted and therefore was rough. There were two steps inside the conduit which made the flow turbulent and caused a hydraulic jump.

(5) The approach bridge leading to the tower remained incomplete with the result that the hoists could not be installed for operation.

(6) As the hoists could not be operated, it became necessary to lower the service gates after leaving a two-feet opening through which it was estimated that a supercritical flow of one thousand cusecs would pass. One of the gates had to be kept suspended by big ropes tied to sleepers kept in the tower.

Heavy rains started from the 9th July 1961. The rainfall on the 9th July was eight inches and on the 10th July, it was four and a half inches. The spillway channel started flowing from the 10th July. Heavy rains and strong winds were causing severe wave wash. The action of the waves was particularly severe along the embankment from chainage 1200 to chainage 700. Bhagwat and Sakhalkar, Deputy Engineer and Sub-Divisional Officer respectively, in charge of the construction work, collected the available labour and started fixing up the corrugated sheets and murum bags on the upstream slope of the Panshet dam. This was between 10-00 a.m. and 12-00 noon on the 10th July. At about 12-00 noon Bhagwat informed Bhalerao, Executive Engineer, in charge of the construction, about the appearance of the wave wash and the action taken by them. Bhalerao

asked them to continue the work of dumping the sheets and murum bags. Bhalerao accompanied by Panse reached the Panshet dam at 2-00 p.m. The bags placed on the slopes were effective in checking the erosion and as such the work was continued. S. V. Desai, Superintending Engineer, Deccan Irrigation Circle, No. 2, was informed about it. He arrived at the dam site at 5-30 p.m. In the company of Bhalerao, Desai inspected the dam. The work of laying bags on the upstream slop was showing good results and it was, therefore, decided to continue the same. Desai also decided that information about the wave wash should be conveyed to Manerikar, Additional Chief Engineer in charge of the Khadakwasla Project. Desai left the dam site at about 8-00 p.m.

Another development, viz., a flow at the downstream side over the conduit was noticed at about 6-30 p.m. by Mrigesh, Wireman and Gopal, Chowkidar. Gopal reported it first to Sakhalkar and then to Bhagwat. All the three then went to the site. By the time, the party went to the site, the electric light went off. Lights were repaired in about half an hour and Bhagwat could notice the flow of water coming through the rock-toe over the left side trench-filling of the conduit. Bhagwat reported this fact to Bhalerao. The latter instructed Bhagwat to keep a watch over the flow and give reports about the same. Bhagwat and the party were watching this development upto 10-00 p.m. The flow was continuous but did not either increase or decrease. The colour of the flow was the same as that of the lake water. Bhalerao did not go to the spot to observe this flow and he says that he thought it unnecessary to go to the spot as Bhagwat had given him the necessary information in all its details and he wanted time to think over the cause of the flow and devise remedial measures. Bhalerao called Panse, Plant Engineer, and Sakhalkar for discussion with a view to find out the possible cause of this flow. He asked Panse to go to the spot and observe the flow, his object being to get confirmation of the information given by Bhagwat. Panse reported to Bhalerao that the flow was about five to ten cusecs and was on the left side of the conduit. According to Bhalerao, nothing could have been done to prevent the flow as the percolation was through the rock-toe and drains could not be constructed at the place of percolation. He did not think it necessary to report the matter to Desai on phone as he wanted to ascertain the nature of the flow, its duration and also he wanted to find out the cause of the flow. According to him, mere reporting about the phenomenon of the flow would in no way have helped anyone in the matter. It would be seen from evidence that the report about the flow of water at the downstream end through the rock-toe was not received by Bhalerao till the departure of Desai and, therefore, that fact could not be communicated to Desai while he was on the site. This fact was not reported on phone to Desai by Bhalerao, because Bhalerao felt that simply reporting about the phenomenon of the flow would not help anyone and that he wanted to ascertain the cause of the flow. Bhalerao, however, was not in a position to ascertain the cause of the flow. According to him, no action could be taken for preventing that flow. The location of this flow was about six feet or so above the conduit and to its left side.

At about 5-30 p.m. Panse, Plant Engineer, noticed that the conduit was running almost full-bore and occasionally, there was a gap of six inches

from the top. At about 6-30 p.m. it was noticed by Patwardhan, Sub-Divisional Officer, that the flow inside the conduit was intermittently full and occasionally the water was flowing at about six or nine inches below the crown. This phenomenon was reported to Bhalerao on the night of the 10th July. But, it appears that Bhalerao did not understand the significance of it and that phenomenon simply appears to have puzzled him. He discussed the significance of the same with the Superintending Engineers, Khursale and Desai, on the 11th morning.

These were all the disturbing features that made their appearance on the 10th July 1961. It has been argued on behalf of the civil authorities that although percolation through the rock-toe at the downstream end of the conduit had made its appearance and was observed by some of the irrigation officers prior to the departure of Desai, still Desai's attention has not been drawn to that phenomenon. In the first place, there is no evidence to show that report of that phenomenon was conveyed to Bhalerao prior to Desai's departure. Had it been conveyed to Bhalerao, there can be no doubt that he would have apprised Desai about the same. There was no point in keeping that information back from Desai. Bhalerao has explained as to why he did not convey that information to Desai on phone on that night and which aspect of the matter has already been adverted to. Bhalerao wanted time to consider the source on the cause of the percolation and that seems to be the main reason why he did not think it necessary to convey the same on that very night. There is no reason to reject Bhalerao's statement viz., that there were no means of controlling the flow of water through the rock-toe. No action, therefore, could be devised in respect of the same. So far as the wave action is concerned, that was brought under the control before the evening of the 10th July. As regards the flow of water through the conduit, information appears to have been carried to Bhalerao sometime in the night of the 10th July and Bhalerao himself has stated (to which aspect of the matter I will presently refer) that even after discussion with Desai and Khursale, he could not connect this phenomenon with the mal-functioning of the conduit; nor could he conclude that this may be due to abnormal hydraulic conditions. Assuming that he was able to connect the abnormal flow conditions with pressurisation of the conduit, even then it is quite clear that nothing could be done by the construction engineers to prevent its happening.

It has further been argued on behalf of the civil authorities that it was the duty of the irrigation officers to apprise the civil authorities as to what was taking place at Panshet on the 9th and 10th July 1961. It is suggested that the irrigation officers were either negligent or deliberately withheld the information as to the actual condition prevailing at the dam on the 9th and 10th July. In this connection, reliance is placed on a letter (Ex. 722) written by Manerikar to Desai on the 7th July 1961. Since considerable arguments are based on the contents of this letter, it would be worthwhile to cite the whole letter :

"As you are aware, the flood pattern in the Mutha river at Poona is liable to be altered due to the construction of the Panshet dam. It is necessary that a flood warning system is set up at Panshet whereby

timely information of discharge likely to go over the Panshet spillway is telephoned to Khadakwasla and Poona for the information of the civic authorities.

It is necessary to have regular observation of lake gauges at Panshet and also a table indicating the discharge at each gauge reading after commencement of spillway.

You may please let me know the action proposed. You may also keep the Superintending Engineer, Deccan Irrigation Circle (I) informed."

Before considering the significance of this letter, it is necessary to remember that the spillway, which is also called permanent waste weir, had not started flowing on the day the letter was written on the 7th July. The spillway actually started flowing with effect from the 10th July 1961. Let me now first of all try to understand the idea underlying this letter by referring to the words used and their plain meaning. The first sentence refers to the flood pattern in the Mutha river being liable to be altered as a result of the construction of the Panshet dam. What it means is that the behaviour of the entire run off of the catchment area, which used directly to flow into the Khadakwasla reservoir before the construction of the Panshet dam would be changed. The Panshet reservoir, first of all, would absorb the run off of the catchment area, and what would flow into the reservoir of the Khadakwasla is the flow that would pass through Panshet spillway. The second sentence, therefore, says that a flood warning system should be set up at Panshet so that timely information of the discharge of the flow through the spillway is telephoned to Khadakwasla and Poona for the information of the civic authorities. I will deal with the meaning of the expression "civic authorities" a little later. In the second paragraph of Ex. 722, it is pointed out that it is necessary to have regular observation of lake gauges at Panshet and also a table indicating the discharge at each gauge reading after the commencement of the spillway. In the third paragraph of the said letter, the Superintending Engineer, D. I. C. No. 2, has been asked to inform the Additional Chief Engineer about the action taken by the former. S. V. Desai while referring to the above letter has stated as follows in his written statement at Ex. 773 :—

"As the work was being interrupted due to rains, the following precautions were taken :

The Additional Chief Engineer had issued a circular giving detailed instructions regarding keeping a round-the-clock watch at the dam site. The Executive Engineer had reported that he has complied with the instructions and the following arrangements made :

- (a) Flood-lighting of the dam was done.
- (b) Staff to inspect the dam round-the-clock was allocated.
- (c) A batch of about 75 labourers was kept ready for emergency work.
- (d) Rain-coats and gum-boots were purchased and kept ready to enable people to work even in rains.
- (e) About 5000 empty cement bags were collected and kept ready.

(f) Records of rain and water level in lake were maintained for regular intervals.

For regulating the discharge through the sluice, the suspended gate was kept with a 2 ft. opening.

Arrangements to take rainfall and lake levels readings were made and these were being communicated to the Executive Engineer, Poona Irrigation Division to enable him to get an idea about the likely floods at the old Khadakwasla dam. He was also supplied with a chart giving the calculated discharge from the permanent waste weir for different depths."

It was suggested to Desai in his cross-examination on behalf of the civil authorities that instructions and arrangements referred to in the said circular and mentioned in his written statement were taken because of the incompleteness of the work of the various components of the dam. Desai repelled that suggestion and stated that the precautions and the arrangements were part of the monsoon arrangements and were expected to be taken at all dams, complete or incomplete. He added that the staff to inspect the dam is necessary for watching how a newly constructed dam behaves. Manerikar, in his written statement at Ex. 664 stated that he had issued instructions in the letter (Ex. 722) dated the 7th July 1961 to set up a warning system at the Panshet dam to enable timely information being sent to Khadakwasla and Poona regarding the spillway discharges from Panshet for the information of the officers and civic authorities in Poona. In answer to questions in the cross-examination on behalf of the civil authorities, Manerikar stated that on the 7th July when he wrote the letter at Ex. 722, he had no emergency in his contemplation. Bhalerao, in his evidence, stated that he had no occasion to see the letter at Ex. 722. He, however, admitted having made several arrangements as mentioned by him in his written statement at Ex. 233. Bhalerao asserted that arrangements were made to communicate the water level in the Panshet reservoir to Nagarkar, Executive Engineer, Poona Irrigation Division. He also asserted, that he was not concerned with giving information to the civil authorities about the lake levels. On the basis of the letter at Ex. 722 and the statements contained in the written statements of Desai and Bhalerao, it was argued that the engineers had some misgivings about the proper behaviour of the Panshet dam from the commencement, and, therefore, extreme precautions were taken for that purpose. Neither the contents of Ex. 722 nor the evidence referred to above lend support to this farfetched conclusion. The emphasis is on the need of conveying information about the likely discharge through the Panshet spillway. It was a well-established practice that the gauge readings of the Khadakwasla dam should be conveyed by the Executive Engineer, Poona Irrigation Division, to the Collector. The object of the emergency arrangements proposed by Manerikar was to enable the Executive Engineer, Poona Irrigation Division, to watch how much water would be received into the Khadakwasla reservoir through the spillway of the Panshet dam. Thereafter the Executive Engineer, Poona Irrigation Division, would convey that information to the Collector.

In this connection, reference may be made to two letters (Exs. 304 and 310) written by Nagarkar, Executive Engineer, Poona Irrigation Division, to the Collector of Poona on 1st July 1961 and 10th July 1961 respectively. In his letter at Ex. 304, Nagarkar stated that the level of water in Mula and Mutha rivers was likely to rise as a result of incessant rains in the catchment area of Khadakwasla and Panshet dams. He stated that the Khadakwasla waste weir (spillway) had already started flowing and, therefore, all the hundred gates of this waste weir were kept open. He also pointed out that the level of water might continue to rise in case the heavy spell of rains did not abate. He, therefore, requested the Collector to make all arrangements as usual in case an emergency occurred. In Ex. 310, Nagarkar stated that the lake at Panshet was full and was likely to spill as there had been more than eight inches of rainfall in the catchment area. He also pointed out that the level of Khadakwasla lake had risen by one foot in spite of the fact that all the gates had been kept open. The level in the morning of 10th July 1961 stood at 30.50. He finally warned that the level of water in the river was likely to increase. Copies of this letter were sent to the D. S. P., Poona City and Rural and the Municipal Corporation. There is, therefore, no substance in the argument advanced on behalf of the civil authorities that although the letter at Ex. 72 contemplated giving of warning about the floods and conveying information in regard to the same to the civic authorities, no such information had been conveyed by the irrigation officers to the civic authorities. As pointed out above, as the water from the spillway of Panshet was ultimately to pour into the Khadakwasla reservoir, so far as the civic authorities are concerned, the only officer who could give correct information and correct warning was the Executive Engineer, Poona Irrigation Division. The information contemplated regarding the discharge passing through the Panshet spillway would convey no meaning to the civic authorities in Poona. It is only the gauge readings at Khadakwasla which could give some idea to the civic or civil authorities about the possible danger of heavy floods or even the possible danger to the Khadakwasla dam. As a matter of fact, Nagarkar did continue to convey the necessary information by Exs. 303, 304 and 310 to the civil authorities till the 10th July 1961.

The endorsement on Ex. 304, which is in the handwriting of Dandavate, Deputy Chitnis of the Collector reads thus :—

“On phone informed Treasury A. K. Dhond about this. He said he will communicate the message to M. Informed Home Inspector, D. S. P., Rural. Informed H. C., D. S. P. City, to communicated to D. S. P.”

The endorsement on Ex. 310 is to the effect that information about the contents of this letter should be given to the Mamlatdars, Poona City, Dhond and Haveli. An argument has been based on the circumstances that the Collector took prompt action on the basis of the information received by him at Exs. 304 and 310 and we are asked to consider whether he would have failed to take similar action if he had received information on the morning of the 11th July that the Panshet dam was in danger and heavy floods were expected. I will deal with this point at a later stage of this discussion. My object in referring to these letters at this stage is to point

out that there is no substance in the grievance made that proper information, as contemplated by Manerikar's letter (Ex. 722), was not conveyed to the civil authorities by the irrigation officers. It is true that the new developments that were taking place at Panshet from the morning till the evening of the 10th July, such as the appearance of flow through the rock-toe; the flow through the conduit which was intermittently touching the crown and leaving space of six or nine inches from the roof and the wave wash, were not reported to the civil authorities on the 10th July. The reason for this appears to be that the engineers themselves were thinking over these developments and were trying to find out their causes. They were also taking such steps as they considered possible in the circumstances of the case. Information was given to the Collector in the early hours of the morning of the 11th July about the condition of the Panshet Dam. There is considerable controversy as to the exact nature and scope of information that was given to the Collector on the morning of the 11th July and, therefore, that question will have to be considered separately and fully. For the time being, it is sufficient to say that the fact that information was not conveyed to the civil authorities about the strange happenings at Panshet on the night of the 10th July, is no ground for holding that the irrigation officers were lack in the performance of their duties. Before closing the narration about the happenings of the 10th July, it is necessary to refer to two other events. The Superintending Engineer, Deccan Irrigation Circle No. 2, had written a letter to the Collector on 10th July 1961 for the installation of a wireless set at Panshet. The contents of that letter have come out in the evidence of Pharate, Resident Deputy Collector (Ex. 862). They are as follows :—

“ One wireless set was badly needed at Panshet lake for obtaining information about the lake levels, flood discharge and rainfall at Panshet and also the condition of the newly constructed earthen dam. Existing telephonic arrangement was not working properly and frequently went out of order due to rainy weather. It is therefore requested to spare one wireless set immediately and to hand it over to the Executive Engineer, Khadakwasla Dam Division. ”

This letter was received in the Collector's office on the 11th July. Immediately thereafter Pharate wrote a letter to Nabar, Superintendent of Police, Wireless, to do the needful. Before however Pharate wrote this letter, Desai and Khursale had approached the Collector in the early hours of the morning of the 11th July and requested for installation of a wireless set immediately. The Collector telephoned to Nabar to do the needful immediately and Nabar promised that the set would come on air by about 3-00 p.m. on that day. It is clear that Desai did not envisage any emergency, when he wrote the letter on the 10th July. On the 10th of July the letter was written mainly because the information in regard to water flowing over the waste weir of Panshet and the consequent discharge in Khadakwasla catchment had to be communicated in pursuance of the instructions contained in Ex. 722. Therefore, the installation of wireless station was really a part of arrangement under Ex. 722 and does not appear to be because of heavy rains and wave action which had come to Desai's notice on the 10th. So far as the morning of the 11th



July is concerned, when Desai made an oral request to the Collector, the matter had assumed urgency. But, this aspect will be discussed a little later.

The second event is that after receiving information from Bhalerao at about 2-30 or 3-00 p.m. on the 10th July about strong winds and heavy wave wash, Desai left Poona for Panshet at 4-00 p.m. He noticed the action of the waves on the upstream face of the dam. He also noticed that the upstream face was being protected by murum bags and corrugated iron sheets. At about 7-30 p.m. he received a message that the level of water in the spillway was rising and that the road leading to Poona might be cut off. For this reason and also with a view to give intimation to Manerikar, Desai left Panshet for Poona sometime at about 7-30 or 8-00 p.m. Desai reached Poona at about 9-30 or 10-00 p.m. As Manerikar did not have a telephone at his residence he rang up Padhye at about 10-15 p.m. Desai told Padhye about the wave action and the protective measures taken in that respect. Padhye replied that that was the best that could be done in the circumstances of the case. He added that he would be informing the Additional Chief Engineer next morning about it. A good deal of comment has been made about Desai not having informed Padhye anything about the turbulent flow in the conduit nor anything about the percolation through the rock-toe at the downstream end of the conduit. All this argument is based on wrong assumptions. So far as appearance of the percolation through the rock-toe is concerned, although it was noticed at 6-30 p.m. by the watchman, Bhagwat went to the spot at 7-30 p.m. after receiving report from chowkidar, on the 10th July. There is nothing to suggest that this was brought to the notice of Desai before he left for Poona. So far as turbulent flow in the conduit is concerned, even Bhalerao learnt about it at night and it is nobody's case that he conveyed it to Desai during the course of the night.

The advocate on behalf of the civil authorities has complained that no information about the developments taking place at Panshet on the 10th July was conveyed to the civil authorities on that day. It is true trouble started brewing at Panshet on the 10th and three disturbing developments came to notice till the evening. The first was severe wave action as a result of strong winds and heavy rains. Protective measures were taken for checking the erosion that was taking place as a result of wave wash by putting corrugated iron sheets and also murums bags on the upstream slope of the dam. These remedial measures proved successful and by about evening, the upstream slope was protected against the corrosive action of the waves. The second was that water started flowing from the rock toe at the downstream and from a location six feet higher than the extrados of the arch. The flow was constant and never grew in intensity from the commencement till the actual collapse of the dam. The flow was estimated to be of the order of five to ten cusecs and the colour of that flow was almost the same as the colour of water in the reservoir. On the 10th July, at any rate, Bhalerao did not consider this phenomenon as a serious development. He felt that since the leak was coming on the lower level, the water from the higher level might have percolated from that side. He has added that although this was his tentative view, he was giving thought to the question as to whether there

were other probable causes to which the leak would be attributed. According to him, this was the reason why he instructed Bhagwat to note the quantity of flow and also to note its colour. Bhalerao has asserted that since the flow was not increasing in its intensity and had remained constant and also its colour and consistency were not changing, he came to the conclusion that that would not cause danger to the dam. The question to be considered, so far as action taken for preventing the collapse of the dam is concerned, is not as to whether the view tentatively formed by Bhalerao was correct or not. As pointed out in the first part of this report, even today there is difference of opinion as to the real cause or source of this flow. Even Dr. K. L. Rao, who has advanced the theory of a special type of piping, has conceded that this flow could not be necessarily connected with the lake water and that water might have passed out of the cracked conduit. The protagonists of the other theories viz., cavitation vibration theory as also pressurisation theory, have suggested that the flow, which appeared through the downstream rock-toe, must be attributed to the water passing through the conduit which spurted out through the openings of the joints after the mortar got fatigued. On the other hand, the Institution of Engineers have suggested that rain water must have passed through the natural crevices of the rock, which is quite a usual feature of the rock in the deccan tract, and this water must have got accumulated on one side and made its appearance through the downstream rock-toe. Whatever that may be, there is complete unanimity among the expert engineers, who have advanced rival theories as explanation for the failure of the Panshet dam, that the flow of water through the downstream rock-toe was not the cause of the failure of the dam nor has it in any way contributed towards its failure. In my view, Bhalerao was perfectly justified in forming a tentative view that rain water from the higher level might have percolated through the layers of the embankment and passed through the lower level. The circumstance that the colour of water of the flow was the same as the colour of water in the reservoir shows that the flow was not carrying any soil from the embankment. The further circumstance which was equally important was that for several hours together the quantity of the flow continued to remain the same. It is true that according to Manerikar, the more disturbing phenomenon among the two that were reported to him on the 11th July viz., subsidence and percolation, he regarded the latter as more dangerous and he has given his own reasons for holding that view, viz., that he felt that this was due to piping. It is known even to a tiro in engineering that piping is a dangerous phenomenon. Manerikar was not on the spot and had not the benefit of personal observation. It is not at all unnatural that on the basis of the report received by him his *prima facie* impression was that the flow might be due to piping action. He did not consider subsidence as a serious development, because according to him, that may be a differential settlement or ordinary settlement, which takes place to a certain extent in the case of every earthen dam. I will advert to this aspect of Manerikar's evidence a little later. For the time being, the point that I am emphasising is that, Bhalerao's assessment about the flow through the downstream side could not in any way be regarded as wrong or unjustified, nor could it be said that it was due to

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complacence. He was also right in not reporting about this phenomenon to Desai during the course of the night, as has been explained by him in his evidence. It is equally clear that no remedies could be devised for stopping this kind of flow and in any case it was necessary to observe the phenomenon for a longer time to ascertain its real cause. The third phenomenon is the circumstance that water was flowing intermittently full through the conduit and occasionally a gap of six or nine inches was left in the progress of flow. The interpretation of this phenomenon was equally difficult and Bhalerao has frankly admitted that he could not attribute it to the malfunctioning of the conduit at least on the 10th July when he thought over the matter, after he received the report about this occurrence. Nobody expected that there would be a pressurised flow, because an opening of two feet was left in each of the gates and the flow of water that would pass through these openings was estimated to be not more than one thousand cusecs. It was also assumed that the flow would be supercritical and the fact that the floor of the conduit was not concreted would result in hydraulic jump or in a pressurised flow, was not realised and, perhaps, could not be realised except by one who has specialised knowledge in hydraulics. There is, therefore, no wonder that Bhalerao ignored this incident. It is further clear that no remedial measures could be found for making the flow regular. I will consider a little later about the appreciation formed by Bhalerao, Desai and Khursale when they went to the downstream end of the conduit and saw themselves the flow and the resulting noise. At that stage, I will bring out the further implications of the appreciation made by the engineers regarding this peculiar flow phenomenon. It has been emphasised in the arguments on behalf of the civil authorities that Bhalerao felt that the flow would not cause danger to the dam. I see no point in this emphasis, because it is nobody's case that the engineers felt on the 10th July that the dam was in danger.

## SECTION 3

## DEVELOPMENTS ON THE 11TH JULY AT PANSHET AND THE ACTION TAKEN BY THE IRRIGATION AUTHORITIES BOTH IN RESPECT OF AVERTING THE DANGER AND GIVING WARNING TO THE CIVIL AUTHORITIES

Things were fast moving to a climax at the Panshet dam. At about 2-00 a.m. on the night between the 10th and 11th July 1961, a serious development took place and that was observance of a sudden settlement behind the tower of the dam. It appears that overseer Kulkarni was the first to observe the sinking of the dam at about 2-00 a.m. He gave a report about it on the phone to Bhalerao, who was staying in the Rest House at Panshet on that night. Within a short time, Overseer Katgeri and Electrical Supervisor Mungi came to the Rest House and reported the occurrence to Bhalerao personally. Overseer Kulkarni also reported to Bhagwat about this. Bhagwat immediately ran down to the colony and woke up the labourers as per Bhalerao's instructions. Bhalerao instructed that all available labour should be collected and murum bags dumped in the sunken portion to keep the embankment sufficiently higher than the water level. Panse also rushed out to collect the staff and to make other arrangements. A little later, Panse and Bhagwat reported to Bhalerao that two transverse cracks had appeared on the embankment and that the situation was dangerous. According to Bhalerao, the news about the subsidence was a matter of serious concern. The report received by Bhalerao was that a portion of the embankment about thirty feet in length had sunk and there were cracks on the casing. Bhalerao asked Panse to go to Poona and inform Desai. Accordingly, Panse left Panshet at about 3-30 a.m. to give a personal report to Desai. Bhalerao made attempts to contact the signaller at Khadakwasla to give a message about the dangerous situation so that from there it would go to the authorities in Poona. There was a special telephonic and telegraphic system of communication between Panshet and Khadakwasla. A similar system was in existence between Khadakwasla and Poona. The signaller's room at Panshet was located near the office buildings of the Deputy Engineers. There was a telephone register kept at the signaller's office at Panshet. The canal telegraphs at Khadakwasla and Panshet were never used and only canal telephone was in use. Bhalerao succeeded in contacting the signaller at Khadakwasla on the phone at about 4-00 a.m., on the 11th July. Immediately he asked the signaller to send a message to Desai that the Panshet dam was in danger. Deputy Engineer, Phadke, had gone with Panse upto the ropeway. Panse, feeling that he might take long time before reaching Poona, instructed Phadke to ask Bhalerao to send a message to Khadakwasla that the Panshet dam was in danger. Phadke met Bhalerao while the latter was sitting in the signaller's room. He conveyed Panse's message to him. Bhalerao added the words "heavy floods expected" after the words "Panshet dam in danger" in this message. This message was put out from Panshet to Khadakwasla on the phone. On his way to Poona, Panse halted at Khadakwasla and phoned back to Panshet to get more information from Bhalerao. From about 5-30 a.m. on the 11th July, the work of laying murum bags and oil drums over the sunken portion was started.

Bhalerao gave this information to Panse. Panse reached Poona at about 7-30 a.m. and explained the situation prevailing at the site to Desai. The message that was sent from Khadakwasla on the wireless telegraphy at the instance of Bhalerao is one of the most important and controversial document in the case. It is at Ex. 375(1) [this is equal to Ex. 385(1)] and it reads thus :

“Panshet dam in danger. Heavy floods expected.”

The addresses as mentioned in Ex. 375(1) are, the Superintending Engineer, Deccan Irrigation Circle No. 1, and Superintending Engineer, Deccan Irrigation Circle No. 2 and the informees mentioned are, the Executive Engineer, Khadakwasla Dam Division, Poona and Executive Engineer, Poona Irrigation Division.

It has been pointed out on behalf of the civil authorities that although subsidence was noticed at 2-00 a.m. still the actual remedial measures i.e. stacking of murrum bags and oil drums were not started before 5-30 a.m. It is, therefore, contended that the engineer were carrying on their work in a leisurely way which indicates that they were not much worried about this new development. The second contention which has been urged not only on behalf of the civil authorities but also by the Commission's Counsel is that Bhalerao was not at Panshet during the night between the 10th and 11th July and at best he might have made his appearance sometime after 5-30 a.m. on the 11th July. So far as the first point is concerned, it is necessary to remember that all the available labour was working throughout the day on the 10th July and had gone to rest during the night. They had to be recalled after being awakened at an odd hour. It was raining all through. Bhagwat broke down and therefore was not of much use. Panse was sent to Poona and thus was not available to Bhalerao. Bhalerao, therefore, had to give personal instructions to the labourers after they were collected by Panse and himself as to how the work was to be carried out at the dam. It was also necessary for Bhalerao to make arrangements that enough material such as drums and empty bags were made available for carrying on the work. Bhalerao has further explained that the electric lights also failed and, therefore, he had to see that the lights were put in order as early as possible. After all the arrangements were made and enough persons assembled, Bhalerao personally led the party to the place where sinking was taking place. This was at about 5-00 a.m. Could it be said in the circumstances narrated by Bhalerao that Bhalerao was either negligent or did not take the matter of subsidence seriously merely because he was not in a position to start the work of bag stacking before 5-30 a.m. or so? Bhalerao was not after all omnipotent. He had to collect men and material, which was bound to take time particularly when the arrangements were to be made during night time. The labour was already exhausted after day's work and was taking rest. It is not easy to rouse them from their slumber and collect them for work. Nor was it easy to collect the necessary material such as drums and empty cement bags. In between, the electric lights failed which must have interrupted the making of necessary arrangements. It is, therefore, not correct to say that Bhalerao either showed any indifference or remissness. In any case, there is no basis for the argument that the delay in starting the work

was due to the fact that Bhalerao did not regard the situation as serious. Bhalerao has specifically asserted that he regarded the condition of the dam as dangerous and that the dam was likely to be overtopped. It must further be noted that the report was that there was sudden sinking to a depth of four/five feet in a portion of the embankment thirty feet in length. Further, Bhalerao's assessment of the situation can be gathered from the message sent by him to Desai, viz., that the dam was in danger.

So far as the second point, viz., that Bhalerao must not have been at Panshet on the night between the 10th and 11th July is concerned, it is significant to note that not only Bhalerao but several witnesses have come before the Commission and deposed that Bhalerao had remained at the dam site and carried on his activities from the Rest House which have been detailed above. It is also significant to note that no question was asked by the Commission's counsel nor even by Mr. Murudkar on behalf of the civil authorities, suggesting that Bhalerao was not at Panshet on the night between the 10th and 11th July. The Commission's counsel cross-examined Bhalerao as to how it was that the Executive Engineer, Khadakwasla Dam Division, was described as 'informee' in the message at Exhibit 375(1). Bhalerao asserted that he had given no instructions to the wireless operator, as he was not directly available to him on the phone, saying that the copy of the message should be sent to the Superintending Engineer, D. I. C. No. 1 and also another copy to the Executive Engineer, Khadakwasla Dam Division. According to Bhalerao, the wireless operator must have sent copies to the S. E., D. I. C. No. 1 and another to him for information on his own. He added that it may be that the operator did so on instructions from the signaller or on his own. It is extremely unfair on the part of the Commission's counsel to urge, in the course of the written arguments, that Bhalerao was not present during the night between the 10th and 11th July without putting a specific suggestion to him in that respect. Not only the Commission's counsel did not make that suggestion to Bhalerao but even Mr. Murudkar has failed to make such a suggestion. The entire cross-examination of Mr. Murudkar relates to the failure of Bhalerao and the irrigation authorities to produce the telephone register at the signaller's office at Panshet. I will presently deal with this aspect of the matter. In the meantime, it may be pointed out that no question was asked to any of the seven witnesses, who have testified to the presence of Bhalerao at the dam site during the night between the 10th and 11th July and also the activities carried on by him.

I will now deal with the circumstances as to how the name of the Executive Engineer, Khadakwasla Dam Division, came to be inserted as an informee. Bhalerao explained that the wireless operator was not directly available to him on the phone and that he left the message with the signaller. Bhalerao has suggested that it may be due to the mistake either of the signaller or of the wireless operator that the name of the Executive Engineer, Khadakwasla Dam Division, came to be mentioned as the informee in the message. There is no reason why this explanation should not be accepted. It is necessary to remember that the originator of the message was the Executive Engineer at Panshet, i.e. Bhalerao himself. The sender has been described as the Executive Engineer at Panshet in Ex. 375(1). It is true that the



telephone register in the signaller's office would have thrown light upon this question. Unfortunately, however, the telephone register was not produced and the question was raised, for the first time, during the cross-examination of Bhalerao, which took place on the 29th June 1962. No application was made at any time on behalf of the civil authorities requesting the Commission to get the telephone register produced. Even on the 29th June 1962 no such application—oral or written—was made by Mr. Murudkar. It has been argued that the Commission should have called for the telephone register on its own and in not doing so, it has shown partiality to the irrigation authorities. The argument and the charge, on which it is based, are both fantastic. I agree that it would have been much better if the irrigation authorities had produced the telephone register at Panshet. It is, however, possible that they felt that the document was unimportant. They could not possibly anticipate any controversy being raised about Bhalerao's presence or absence at the dam site. The only purpose, which the telephone register could possibly have served, is to show whether the names of the addressees and informee, to whom the message was to be communicated, were mentioned. One thing, however, is certain and it is this that the sender of the message [Ex. 375 (1)] was no other person than the Executive Engineer at Panshet. In view of the fact that the presence of Bhalerao at the dam site on the night between the 10th and 11th July has been testified by as many as seven witnesses and further in view of the fact that no question was asked to any of them including Bhalerao as to whether he was present at the dam site on that night, it is wholly unnecessary to embark upon the inquiry which, in any event, would not destroy the positive evidence, particularly when the same went unchallenged.

In order to lend support to an argument based on the entry in Ex. 375(1) showing that a copy of the message was to be sent to the Executive Engineer, Khadakwasla Dam Division, reliance is placed on the circumstance that Bhalerao did not visit the dam between the time of departure of Desai and 5-00 a.m. on the 11th July. Bhalerao has admitted that he could have walked down to the place to see the flow condition himself along with Bhagwat. He has, however, added that that would have taken about an hour or so. He has explained that he did not think it necessary to go to the spot because Bhagwat had given necessary information in full detail and that he wanted time to think over the cause of the same and decide about the remedial measures. He has further explained that he called Panse and Sakhalkar for discussion with a view to find out the possible source. Bhalerao had asked Panse and Bhagwat to convey information regarding the developments at the dam and Bhalerao was getting information on the phone through the whole of the night. It is, therefore, clear that Bhalerao did not go to the dam before he heard the news about the subsidence, because he felt that it was unnecessary to see the condition of flow through the rock-toe for himself and that he had asked Panse and Bhagwat to keep a watch with a view to ascertain whether the volume of the flow increased or whether the colour of water became muddy, which factors were very essential for determining as to whether this was a case of piping. There were many other things also to be looked after by Bhalerao

on that night. Once we hold that the circumstance as to whether Bhalerao went to the dam site to see the flow condition for himself or not on the night of the 10th July is neither here nor there, then the support sought to be lent from that circumstance to an essentially weak argument about Bhalerao's absence at the dam site on the night between the 10th and 11th July totters, and, if I may say so, falls to the ground. Anyway, as pointed out above, that circumstance has no significance whatsoever in the present case, particularly when the presence of Bhalerao at the dam site is supported by the other overwhelming evidence.

I will now pass on to one of the most important points in the case, viz., whether the message at Ex. 375(1) or its substance was communicated to Prabhakar, Collector of Poona, in the early hours of the morning of the 11th July. It is common ground that Khursale and Desai, Superintending Engineer, D. I. C., 1 and 2, respectively and Nagarkar, Executive Engineer, Poona Irrigation Division, went to Prabhakar's bungalow in the morning at about 6-30 a.m. on the 11th July and had a talk with him. It is the case for the three engineers that they conveyed the substance of the message, viz., that the Panshet dam was in danger and that heavy floods were expected, to the Collector; that thereupon the Collector said that he had received a similar message and that he had decided to give warnings for evacuation within a belt of half a mile on both sides of the Mutha river. On the other hand, Prabhakar contends that all that the engineers told him on that morning was that there were heavy rains in the catchment area of the Panshet dam on the 9th and 10th July and that the lake was full. Prabhakar added that he was also told that there was a strong breeze causing high waves in the lake which might splash water over the dam. Prabhakar has attributed the above statements to Desai. Prabhakar also states that Desai told him that the three engineers were proceeding to Panshet to study the situation on the spot. These are the two rival versions about the talk that took place in the meeting between Prabhakar on one side and the three engineers on the other in the early hours of the morning of the 11th July. It is not disputed that the three engineers had received the message at Ex. 375(1). The message itself was addressed to the Superintending Engineer, D. I. C., II. Nagarkar's name did appear in the message as an informee. Nagarkar, in his written statement (Ex. 302), has explained, how he received that message, as follows :—

“It was at about 4-30 a.m. on Tuesday the 11th July 1961 that I received a phone message from Shri Deshpande, Maistry, that Panshet dam was in danger. I instructed him to contact Panshet and obtain further details.

I immediately contacted Shri S. V. Desai, S. E., D. I. C. (2) on phone. We decided to inform Shri Khursale, S. E., D. I. C. (1). Thereafter, the police wireless operator, Bhamburda wireless station phoned me and enquired of me about the telephone number of Shri Desai. I asked him whether he wanted to ring up Shri Desai to communicate the message about Panshet dam. He answered in the affirmative. I gave him telephone number of Shri Desai and asked him to communicate the message to all authorities especially the Collector and the District Superintendent of Police also.”

Nagarkar then went to Khursale's bungalow where Desai had already come. It was decided that all the three should contact the Collector of Poona and keep him informed about the danger to the Panshet dam. In answer to questions in cross-examination by the Commission's counsel, Nagarkar stated (Ex. 301) :

"He (Deshpande, Maistry) told me that he had received a message from Theurkar, Canal Signaller at Khadakwasla.....I instructed him to contact Panshet authorities and obtain better particulars. I contacted Mr. Desai, S. E., between 4-30 a.m. and 5-00 a.m. on the phone. Desai had not received any message till then regarding the condition of the Panshet dam. I went to Khursale's house at 6-00 a.m. By that time, Desai also had arrived there.....The wireless station at Khadakwasla was established at my instance and that is why the police wireless operator phoned up to me asking Desai's number.....I asked the police operator to communicate the message to the Authorities such as the Collector and the D. S. P., because I thought that there should be an official communication as the communication was relating to an emergency."

The only point that was raised by Mr. Ghaswala, on behalf of the civil authorities, in the cross-examination was as to whether Nagarkar had made any record of conversation that took place between him, Desai and Khursale on one side and Prabhakar on the other, and Nagarkar stated that he did not make a record of such conversation. He also admitted that, so far as he was concerned, the first record of the conversation was contained in the written statement (Ex. 302) which was prepared from memory. It is significant to note that it was not suggested to Nagarkar by Mr. Ghaswala that what he was telling about wireless operator having been instructed to communicate the information to the Collector and the District Superintendent of Police was a lie and an invention. For the first time in the written arguments it has been vehemently argued (*see* the written arguments submitted by Mr. Murudkar on behalf of the civil authorities) that Nagarkar has invented the story that he informed the wireless operator to convey that message to the civil authorities such as the Collector and the District Superintendent of Police.

Khursale and Desai in their written statements (Exs. 473 and 773 respectively) as also in their depositions (Exs. 472 and 772) have supported Nagarkar on the point that the three engineers told the Collector that they had received a message saying that the Panshet dam was in danger and heavy floods were expected, to which the Collector replied that he too had received a similar message and that he was making arrangements to alert the people within a belt of half a mile on both sides of the Mutha river. It is true that Prabhakar was not specifically questioned by the Senior Advocate on Record as to whether he had received the message or the substance thereof at Ex. 375(1) before his meeting with Khursale, Desai and Nagarkar. It is contended on behalf of the civil authorities that this was an important omission, which indicated that the Senior Advocate on Record was not serious in fixing the knowledge of the message at Ex. 375(1) upon the Collector. There is no substance in this argument. The Collector has put forward a specific version as to the talk

that took place between him on one side and the three engineers on the other and according to him, the three engineers merely talked about heavy rains, strong winds and high waves. This itself indicated that Prabhakar was pleading that he had neither received the message at Ex. 375(1) nor was the substance of the same communicated to him by anyone, including the three engineers. Mr. Phadke, on behalf of the Citizen's Committee, however, cross-examined Prabhakar on the point and this is what Prabhakar has to say (Ex. 421) :

"When M/s. Desai, Khursale and Nagarkar saw me in the morning at 6-30 a.m. on the 11th, they did not mention to me that a wireless message was received from Bhalerao to say 'Panshet dam in danger, heavy floods expected.' Nor did they make any mention of this in the afternoon."

Whether the question is put by the Commission's counsel or any other advocate is a matter of little consequence. It is sufficient that a question was put to Prabhakar and his answer elicited in that respect. As a matter of fact, as pointed out above, there was no need for asking any question to Prabhakar on this point in view of a specific case made out by him in his written statement (Ex. 422).

I will now consider the question as to which of these two rival versions is more probable and which is corroborated by other evidence and the circumstances of the case. When admittedly the engineers had received the message that the Panshet dam was in danger and that heavy floods were expected, it is difficult to believe that they would withhold that vital information from the Collector particularly when they had gone to the Collector's bungalow in the early hours of the morning of the 11th July for conveying the information regarding the condition of the Panshet dam. The engineers had two objects in their mind and that is why they went to the Collector in the early hours of the morning which roused the Collector's curiosity who questioned them by asking as to what brought them at that early hour. The first was to apprise the Collector about the condition of the Panshet dam and the second was to expedite installation of a wireless set at Panshet. Although the idea of installation of a wireless set was mooted earlier and a letter was written on the 10th July itself, requesting the Collector to have a wireless set installed at Panshet as early as possible, the urgency to that question was added by the grave news that the Panshet dam being in danger having been received by the engineers on that morning. (Nagarkar really wanted wireless mobile van to go to Panshet). It is from that point of view that both the objects could be said to be interlinked. It is implicit in the first object of conveying information about the serious condition of the dam, that the Collector also should convey warnings to alert people of the impending danger, viz., heavy floods. Now, having gone to the Collector to apprise him about the condition of the Panshet dam, does it stand to reason and commonsense to say that the engineers did not disclose the substance of the message received by them to the Collector? That itself shows that the story put forward by the Collector is inherently improbable. When a story, which does not stand to the test of probability and commonsense and which is inherently unnatural, is put forward, such a story has got to be rejected and is always rejected in a court of law

irrespective of whether the person setting up such a story is highly placed or not. No explanation has even been attempted as to why the engineers should withhold this vital information from the Collector.

Apart from the intrinsic naturalness and merit of the conversation put forward on behalf of the three engineers, there is abundant documentary evidence to corroborate their version. D. S. P. Heble says in his deposition (Ex. 535) that he did not receive the message at Ex. 375 (1) nor was the substance of the same communicated to him by anyone. It is clear from the statement of Sawant (Ex. 1249/17) that the V. H. F. Station at Vishrambag was receiving messages from Khadakwasla. If that is so then the D. S. P.'s office must be presumed to have received the message at Ex. 375(1). Heble states in his deposition that he had a talk with the District Magistrate, later, when he told him [Heble asked him as to whether he had communicated the substance of the message at Ex. 375(1) to the D. S. P. Rural] that since he himself had not received the message, there was no question of communicating the same to the D. S. P., Rural or anyone else. G. S. Joshi, Police Inspector, Local Intelligence Branch, Rural, Poona, was holding the charge of Home Inspector on the 11th July 1961. Krishnaswamy, the then D. S. P. Rural, was out of Poona and was expected to camp at Dhond on the 11th July. According to G. S. Joshi, Prabhakar telephoned to him saying that the Panshet dam was in danger and asking him to take the necessary precautions. This is what Joshi says in his evidence (Ex. 842) :

"On the 11th July 1961 in the morning at about 7-30 a.m. I received a telephone from the District Magistrate, Poona, Mr. Prabhakar, saying that the Panshet dam is in danger and asking me to take precautions. On receipt of this message, I informed the Police Sub-Inspector, Haveli, to go upto Panshet from Haveli and alert the people on the banks of the river. I also telephoned to Dhond Police Station and asked the Sub-Inspector to send parties of policemen to the villages on the banks of the Mutha river. I informed both of them that I had received a message from the Collector saying that the Panshet dam was in danger." While communicating the message to the P. S. I. Dhond, Joshi informed the P. S. I. that the message should be communicated to the D. S. P. Rural. Ex. 845 is an extract of the weekly diary of Joshi, Police Inspector, which runs thus :

"Received a telephone from the D. M. Poona in the morning that Panshet dam is in danger and floods are likely to come. Accordingly immediately inform P. S. O., Haveli to send S. I. to inform people accordingly to the villagers residing on the banks of the Mutha river in their jurisdiction. Similarly, gave instructions on telephone to II P. S. I., Dhond to alert the men on the banks of Bhima as floods to Mutha are likely.

Informed P. S. I., Indapur likewise. Attended office. Informed P. S. I., Loni-Kalbhori to do the needful."

This entry fully supports the evidence of G. S. Joshi and negatives the stand taken by the Collector. It is impossible to imagine that Joshi would think of making a false and imaginary entry in the weekly diary because at the time when he made the entry he was in no way interested one way

or the other. This is not merely a case of making a false entry. This is a case of imagining and inventing things, that is to say, creating something out of nothing. The entry specifically says that Joshi received a telephone from the District Magistrate on that morning. It further says that the message conveyed by the District Magistrate stated that the Panshet dam was in danger and floods were likely to come. The idea conveyed by the words of the message 'Panshet dam is in danger' could not possibly have been spun out by Joshi out of his imagination. It is, therefore, clear that Joshi did receive this message from somebody. This entry evidently echoes the message of Bhalariao at Ex. 375(1). Assuming that Joshi got this information from somebody, it is difficult to understand why he should have stated in the weekly diary (Ex. 845) that the information emanated from the District Magistrate, nor is there any reason why he should suppress the name of the person from whom he had got that message. It is an admitted fact that he did convey information to the P. S. Is., Haveli, Dhond, Indapur and Lonikalbhor. The action taken by Joshi also corroborates the entry, viz., that the P. S. Is. of the stations mentioned above were informed by him. Of course, there is dispute as to the nature of information conveyed by Joshi to the various Police Stations, and I will presently discuss the nature and significance of the information conveyed by Joshi to the various Police Stations as disclosed in the reports submitted by the Police Officers. Before doing so, it is necessary to refer to another near contemporaneous record and that is the report submitted by the D. S. P. Rural to the I. G. P. on the 31st July 1961 (Ex. 844). The report begins with the following sentence :—

"On 11th July 1961 at about 07:30 hrs. the Collector, Poona, informed the P.I., L.I.B., Poona Rural stating that Panshet dam was in danger." It further states :

"Acting on this information, the P.I. alerted the Haveli Police Station, Lonikalbhor Police Station, Dhond and Indapur Police Stations, which are situated alongside the downstream of the Mutha river. The Haveli Police Station, in particular, was directed to take prompt measures to remove the villagers to places of safety. Similar instructions were also given to the other Police Stations."

This part of the report obviously is based upon the entries in the weekly diary (Ex. 845) and the contemporaneous records in the form of diaries of the various Police Stations and the reports submitted by the police officers, to which reference would be made presently.

It is argued on behalf of the civil authorities that it is ridiculous to suggest that the Collector himself would speak to the Home Inspector and that if at all the Collector wanted to convey some information to the Home Inspector, Rural, he would have asked his subordinates to do so. In answer to questions in cross-examination by Mr. Murudkar, Joshi has explained the position as follows (Ex. 842) :—

"On many occasions, prior to the morning of the 11th July 1961, the District Magistrate, Poona, had rung me up for various matters. Whenever the D. S. P. Rural, Poona, was not in the headquarters, the District Magistrate's telephone used to be taken up by me. I cannot name

a particular occasion, because the District Magistrate used to ring me up very often whenever my D. S. P. was not in Poona. When the D. S. P. is in Poona, the District Magistrate would ring him up and on such occasions his subordinate in the Collector's office would ring me up. Generally Mr. Dandavate used to ring me up. Between 1st July 1961 and 11th July 1961, Dandavate had rung me up on many occasions. There were several purposes for which he would ring me up. For instance if no report is received by the District Magistrate, he will ask me about it."

When we remember that at the relevant time Joshi was not only officiating as the Police Inspector, L.I.B., but was also holding the charge of the Home Inspector Rural, then it becomes apparent as to why the Collector had no other alternative but to contact the Home Inspector, when he knew that the D. S. P. himself was out of Poona. There was, therefore, nothing unnatural in the District Magistrate conveying the information to the Home Inspector of the D. S. P. Rural on the morning of the 11th July about the danger to the Panshet dam.

Let us now examine the various messages that were sent by Joshi to the Police Stations at Haveli, Dhond, Indapur and Lonikalbhor. Ex. 846 is an extract from the weekly diary maintained by C. W. Sulladmath, P.S.I., Haveli Police Station. It runs thus :

"As per phone message received from H. P. I., Poona Rural, left Poona in a government vehicle along with Policemen at about 8-30 hrs. and went upto Panshet dam at about 12 hrs. Distance by road 25 miles, alerting the villagers of the following riverside villages of the danger and likelihood of Panshet dam being breached owing to heavy rains."

Then the names of the nine villages have been mentioned, which include Nanded. The P.S.I. then described his impressions about the condition of the Panshet dam which he visited in the course of his itinerary that morning. He says :

"The waste weir water of Panshet dam was gushing out in full making approach to the dam almost impossible. I then walked on foot about a mile in mire and water and crossed along with P.I. Wireless with the help of a cradle rung along a steel wire tied across the bed of waste weir and pulled either side by means of ropes. We then went in a jeep to the Panshet dam with a view to contact the Executive Engineer, Shri Bhale-  
rao, for taking instructions for the P.I. Wireless for installing the wireless. It was a terrific sight with a vast expanse of water held by the dam leaving only about 15-20 feet to reach to the top of the dam, all the time raining in torrents and gusty wind blowing. When we went half way on the dam, we came to know that Shri Bhalerao was at the Travellers' Bungalow."

He then described his activities in the several villages viz., Vithalwadi, Nanded, Khadakwasla, etc. The fact that the Police Sub-Inspector went straight to the Panshet dam defying bad weather and bad communications is indicative of the serious view that he had taken on receiving the news from Joshi, Home Inspector. The entries of P.S.I. Sulladmath in Exhibit 846 receive further corroboration from the entries in the Patrol Book

(Ex. 847) maintained by Head Constable Dhanwate of the Khadakwasla Outpost and also the entries in the note book (Ex. 848) maintained by Police Constable Sampatrao Patankar. Ex. 847 speaks of a message having been received regarding the danger to the Panshet dam. It also mentions that the Head Constable went to the wireless station and made inquiries with Shukla. He was informed that Shukla had asked the Poona wireless station to convey the information about the danger to the dam to the Collector and the D.S.P. Sampatrao Patankar at Ex. 848 states that he went to Sulladmath to give warning about the danger to the villages on the banks of the river. The evidence of the above police officers finds complete corroboration from the statement of Martand Eknath Ghule (Ex. 1169), who was the Surpanch of the village Nanded in Haveli Taluka. It may be recalled that Nanded was one of the villages to which visit was paid by P.S.I. Sulladmath that morning (11th July). The relevant portion of Ghule's statement runs thus :

“ On reading news on the morning of 11th July 1961 in a newspaper, I went to the road with a view to go to Panshet. By that time, P. S. I. Haveli came there in a car. He told me that conditions at Panshet indicated that the dam would breach. He asked me whether I had given warnings to the people of the village. I told him that I had given such warnings and that I was thinking of visiting the Panshet dam. The P. S. I. then took me in his car to the dam. On the way, the P. S. I. went on giving warnings to the leaders of each of the villages on the banks of the river.”

He then describes the condition of the dam as he witnessed it and says :

“ I was convinced that the dam would not endure and would immediately breach, from the conditions which I noticed at the site. Therefore, I returned immediately and gave an idea to the people regarding the danger to the dam and actually evacuated the people to safer place in the night.”

He then states that being convinced of the danger to the dam, all the villagers left the village and stayed for the whole night on a hillock near Dalviwadi. This is the evidence so far as the activities of P. S. I. of Haveli Taluka is concerned, which activities were based on the information received from Home Inspector Joshi.

I will now come to the evidence relating to the information conveyed to the Police Station at Lonikalbhor. Ex. 849 is a copy of the letter written by Home Inspector Joshi, to the P. S. I., Lonikalbhor on 11th July 1961. The letter runs thus :

“ As water in the Panshet dam has increased to a great extent, there is a possibility of the floods in the river. Therefore, people living in villages on the banks of the river should be alerted and measures taken for protecting them from the floods.”

Ex. 850 is the report submitted by V. K. Deshpande, II Police Sub-Inspector, Dhond, on 12th July 1961 to the Police Inspector, L. I. B., Poona Rural. The P. S. I. mentions in that report of his having received a telephone about the subject “ Regarding the phone received on 11th July 1961



for alerting people as there was danger of flood water": Ex. 851 is a memo, sent by P. S. I. Dhond, to the Beat Head Constable on 11th July 1961. This memo also speaks of increase of water in the Panshet dam. Ex. 852 is an extract from the station diary of Dhond Police Station, which also speaks of increase in water in Panshet dam. On the basis of these documents and also some others, to which reference will be made hereafter, it was suggested to Home Inspector Joshi that the only information that he had conveyed was regarding the increase of water in the Panshet lake and the consequent possibility of there being floods in the Bhima river. Joshi explained that these documents relate to the action taken and therefore, they need not specifically mention that information was received by the various officers to the effect that the Panshet dam was in danger. There is, however, an important piece of evidence, which shows what was the information received at Dhond Police Station and that is an extract from the Patrol Book (Ex. 853) of Head Constable, Dhond. This extract clearly mentioned both the facts, viz., that the Panshet dam was likely to breach and that water was likely to increase.

I will now turn to the evidence relating to the information conveyed to the Police Station at Indapur. Ex. 854 is a copy of the telegram sent by Home Inspector Joshi to the Police Sub-Inspector, Indapur, which runs thus :

"Heavy floods expected to Bhima river. Alert men on the bank. Take necessary precautions."

This telegram, no doubt, does not mention specifically that there was danger to the Panshet dam, but it is implicit that there was danger to the dam because without breach of either of the two dams, it was unlikely that heavy floods would come to the Bhima river.

There is another important piece of evidence, which supports Joshi's version that what he conveyed to the various Police Stations was that, Panshet dam was in danger and floods were expected, and that is the trunk telephone register, which is at Ex. 859. Mr. Murudkar cross-examined Joshi as to whether the police stations at Haveli and Dhond maintained telephone register and Joshi stated that these police stations must be maintaining telephone registers. He also admitted that the telephones made by him to Haveli and Dhond Police Stations were on trunk. This cross-examination of Joshi took place on the 24th July 1962 and it remained incomplete. The cross-examination was resumed on the 25th July by Mr. Murudkar. In answer to the question put by him, Joshi stated (Ex. 842) :

"I deny the suggestion put to me that even in my phone message to Dhond and Haveli, I did not speak about the danger to the Panshet dam. I did speak about the danger to the Panshet dam in these messages. I deny the suggestion that I only informed the Dhond Police Station that there was a likelihood of increase of water. I did mention that there was danger to the dam."

The witness then stated that he had brought the trunk telephone register of his residence in which the messages he gave to Dhond Police Station have

been noted. The witness was then allowed to produce the register (Ex. 859). The entry dated 11th July 1961 at 8-15 a.m., reads thus :

“Informed second Sub-Inspector, Dhond, Shri Deshpande to send men and inform the villagers on the banks of Bhima to be alert as floods are expected, Panshet dam being in danger.

(Signed) G. S. JOSHI,

11-7

Joshi explained that the trunk telephone register was under water and that is why mud had stuck to it. He also explained that it is not the practice to maintain a register in regard to the telephones received. Then the cross-examination proceeded on other points, to which a reference will be made hereafter. It has been strenuously contended by Mr. Murudkar that it was wrong on the part of the Commission to have admitted the telephone register produced by Joshi in the course of his cross-examination. The advocate has gone to the extent of saying that this leniency shown in the matter of allowing production at that late stage indicated that the Commission was anxious to clutch at any piece of evidence, which is unfavourable to the civil authorities. There is no substance in these allegations and these allegations only indicate the desperateness to which the civil authorities have been driven as a result of the uncompromising position taken up by them. As stated above, Joshi's evidence stands corroborated from the entries in his weekly diary (Ex. 845) to which no exception has been taken or could be taken on behalf of the civil authorities. His evidence also receives support from the other documents discussed above. There was, therefore, no need for the Commission to admit any other document, which would serve the purpose of supporting Joshi's evidence. Joshi has not submitted any written statement to the Commission. The documents, however, were produced before the Commission by Shri Heble who has signed the forwarding letter for District Superintendent of Police (Rural). For the first time, in the cross-examination of Joshi on the 25th July 1962 Mr. Murudkar tried to suggest that in his telephone messages to Dhond and Haveli, Joshi did not mention anything about the danger to the Panshet dam. I have already referred to the overwhelming evidence relating to the message sent by Joshi to the Haveli Police Station and the action taken by Police Sub-Inspector, Sulladmath on the basis thereof. The suggestion, therefore, that in the phone message to Haveli, there was no reference to the danger to the Panshet dam must be considered to be utterly desperate. Joshi asserted that he did speak about the danger to the Panshet dam in his phone messages both to Haveli and Dhond. It was at that stage and in order to repel the unwarranted and, if I may say so, irresponsible suggestion made in the course of the cross-examination, that Joshi stated that he had brought the telephone register maintained at his residence in which the message to the Dhond Police Station had been noted. The object in admitting this document was to demonstrate how the suggestion made by the advocate on behalf of the civil authorities was false and irresponsible. It has nothing to do with the truth or falsity of Joshi's evidence which was amply corroborated by the entries in the weekly diary (Ex. 845) and

the other documentary evidence referred to above. It is equally significant that no question was asked to Joshi challenging the genuineness of the telephone register at Ex. 859. In order to lay down a foundation for an argument that the register was not genuine and that the Commission was wrong in accepting a suspicious piece of evidence at a late stage, it was necessary to ask questions to the witness clearly hinting that the register had been fabricated by him in order to support the statements made by him. Having failed in making any suggestion challenging, even remotely, the genuineness of Ex. 859, it is strange that now an entire tirade has been let loose upon not only Joshi but also the Commission for having admitted the telephone register. The entry and the register containing the same was closely examined by me, by Mr. Murudkar, by the Commission's counsel and by Mr. Phadke, on behalf of the Citizens' Committee. The manner in which the entry was made and the circumstance that mud was sticking to the covering page and to the page containing the entry and also to some other pages clearly show that the entry was made before the floods and that the register was actually in flood water. Mud had stuck to the portion of the page at which the entry ends. The water marks as also mud is seen on both corners of this page and near about the entry, which unmistakably show that the entry was positively made prior to floods. Realising the futility of impugning the genuineness and authenticity of the telephone register Mr. Murudkar did not pursue the matter in his cross-examination. It is very easy, after the end of the proceedings, to make unfounded allegations and cast aspersions against the Commission. Had it been hinted that the document was suspicious or had any objection been raised for its admissibility at that stage, I would certainly have considered the question and would not have straightway proceeded to exhibit the document. Not a word of protest was uttered when the document was admitted in evidence and exhibited. The attitude adopted by the civil authorities can be described as "Those who are not with us are against us". If Joshi, who is also a member of the Police Department says something which runs counter to the theory put forward by the Collector and the District Superintendent of Police, then Joshi must be damned as a liar. If Chaturvedi, former District Superintendent of Police, Poona, to whose evidence I will have occasion to refer hereafter, says something about 1958 floods, which runs counter to the case put forward on behalf of the civil authorities, then pour fire and brim stone on him. The civil authorities have gone even to the extent of hinting that Chaturvedi has given false evidence, because he happens to be a Deputy Secretary of the Police Commission, of which Mr. Bakhle, Senior Advocate on Record, is one among other members. I will dilate upon this question at the appropriate stage of this discussion. Suffice it to say that the attack against Joshi is most unwarranted and the attack against the Commission for having admitted the telephone register is cowardly.

It has been contended on behalf of the civil authorities that the Commission ought to have examined the Station Officer at Haveli and Police Sub-Inspectors of Dhond and Indapur. No request was made to the Commission at any time by the advocate appearing on behalf of the civil authorities

that these officers should be examined. The advocate has used a highly objectionable expression by saying that these witnesses have been kept back. Such expression may be permissible in respect of parties who are putting up specific cases and bringing witnesses in their support. The Commission has no case to prove. It is only exploring various possibilities. The Commission would examine such witnesses as the Commission thinks would throw light upon the questions in inquiry. It is the duty of the interested parties to suggest to the Commission that particular witnesses should be examined. Having failed to make such a request, it is not open to the advocate to turn round and say that the witnesses have been kept back. I do not think that any useful purpose would have been served by examining the aforesaid witnesses, particularly when the document, to which they were parties, have come on record and have been exhibited, and we have to draw inference with reference to all the documents and the explanations offered by Home Inspector Joshi in respect of the same. The advocate representing the civil authorities, in the course of his written argument, has gone to the length of saying that Joshi is a got-up witness. Not only the expression is objectionable but it is baseless and absurd. No suggestion, whatsoever was made, while Joshi was in the witness box, that he was giving tutored or false evidence. A specific question was asked to Heble in the course of his evidence as to whether he wanted to suggest that the entry in the weekly diary (Ex. 845) of Home Inspector Joshi was fictitious or a piece of fabrication. Heble states (Ex. 535) :

“ I will consider the entry in the weekly diary of the Home Inspector as incorrect but not either fabrication or fictitious.”

It was impossible to call that entry as a piece of fabrication, because reference to the same had been made in the report of Krishnaswamy, the then D. S. P., Poona Rural, as far back as 31st July 1961. It is difficult to understand what Heble means by saying that the entry is incorrect. It speaks of a telephone message having been received from the Collector and also gives the substance of that message. The statement that the message was received from the Collector would be either true or false. There is no third alternative such as incorrectness or inaccuracy. Could Joshi spin out the name of the District Magistrate (Collector) as being the source of the message from out of his own imagination? If so, why should he do so? These are important questions, to which no answer has been provided in the prolific and laborious arguments advanced on behalf of the civil authorities. If Joshi had received a message from another source, why should he suppress that source and attribute it to the District Magistrate. As regards the substance of the message also, it is difficult to imagine that Joshi would create the contents of the message out of his imagination. The genuineness of the weekly diary can be established by making reference to the entry in Exhibit 845 of the 12th July 1961. That entry states that Joshi received a telephone in the morning at 7-20 a.m. from the D. M., Poona that Panshet dam had burst and requesting him to make arrangements to stop the traffic from Khadakwasla to Panshet. It is significant that this statement has not been

challenged in his cross-examination. After recording the work that Joshi did on the morning of the 12th July 1961, he refers to his having seen some persons standing in the window of the International Book Stall. He shouted to them asking them to break the ventilator and come out. He also requested the men standing on the top of that building to take the people trapped in the window and save their lives. These statements have been fully corroborated by the evidence of Dixit, Proprietor of the International Book Depot (Ex. 881). It is true that Dixit does not refer to Joshi by name, probably because he must not have seen him and recognised him. The following statements made by Dixit are very eloquent (Ex. 881) :

“ The people who were standing on the terrace of the building in front of our building saw us standing in that precarious position. They shouted to the people standing on the terrace of our building telling them that we were trapped.”

The reports of three policemen viz., Police Constable, M. B. Vanshiv [Ex. 1243 (15)], and Head Constables R. D. Kulkarni and D. B. Patil [Ex. 1243 (23 and 24)] fully corroborate the entries made by Joshi on the 12th July 1961, in his weekly diary (Ex. 845). All the three constables have mentioned the name of Home Inspector Joshi as having been trapped in the building called Dutta Nivas. When the entries in the weekly diary of 12th July 1961, have not been challenged and when we actually find that they have been corroborated by the evidence of respectable citizens and the reports of three constables, how can it be suggested that the entries made on the previous day i.e., 11th July 1961, are incorrect, which is an euphemistic way of saying that they are false? In answer to questions by the Commission's counsel, Heble stated that the message at Ex. 375(1) was not received by him nor was the substance thereof communicated to him by anyone from Vishrambagwada Control Room or by the District Magistrate. He added (Ex. 535) :

“ A few days after the floods, I had a talk with the District Magistrate and he told me that this message was not communicated to the D. S. P. Rural by him. I have made no note anywhere of this talk with the District Magistrate.”

As this statement was volunteered by Heble and appeared to be somewhat unusual, the Commission wanted to give Heble an opportunity to explain the context and the background in which he came to have a talk with Prabhakar on this point. This is sufficient to prove that the Commission was holding the scales even and did not want to catch any party unawares. Heble, in his deposition (Ex. 535) says :

“ Mr. Krishnaswamy was the D. S. P. (Rural) on the 11th and 12th July 1961. Krishnaswamy, I understand, had submitted a report to the I. G. P. about the floods. The D. I. G. apprised me of the fact that Krishnaswamy had referred in his report dated 16th (31st) to the fact that the D. M. had informed Home Inspector Joshi of Poona Rural about having received a message from Bhalerao on the morning of the 11th July that Panshet dam was in danger and heavy floods were expected. This may

be in the month of September 1961 and, in any case, after the submission of the record to the Commission. The D. I. G. asked me as to whether I had also received a similar message from the D. M. on the 11th. I replied in the negative. It must be on the same day that I approached the D. M. and asked him as to whether he had informed Home Inspector Joshi as to why he did not inform me about it. The D. M. plainly told me that he himself had received no such message from Bhalerao, and therefore, there was no question of his informing Home Inspector Joshi or anyone about the same."

(The passage is not continuous but comprises statements at different places.)

He was then asked to state whether he considered the report to be a fabrication and I have already referred to the answer given by Heble. Although this may be a satisfactory explanation about the occasion for the talk between Heble and Prabhakar, still that does not explain the entry that has been made by Joshi in his weekly diary on the 11th July (Ex. 845). It is impossible to characterise the entry as fictitious or even incorrect.

It has been argued that if the Collector had really received the message at Ex. 375 (1) or its substance, he would not have failed to take appropriate action on that basis. This really begs the question. In this connection, it is pointed out that Prabhakar had taken action on the letters received by him, viz., Exs. 303, 304 and 310. In answer to questions by Mr. Ghaswala, on behalf of the civil authorities, Prabhakar made a village statement saying (Ex. 421) :

"I took action on Exs. 303, 304 and 310."

Ex. 303 is a letter written by Nagarkar to Prabhakar on 30th June 1961 requesting for installation of a wireless set at Khadakwasla in anticipation of the sanction from the I.G.P. At paragraph (5) of the letter (Ex. 303) it is stated :

"It is presumed that necessary arrangements regarding precautions during floods are made by the Municipal and Police authorities in case of emergency."

Below Ex. 303, Prabhakar made the following endorsement (Ex. 303-A) :

"Advice  
D.C."

in regard to paragraph 4 of Ex. 303 the endorsement reads :

"I agree. Write to S.P., Wireless accordingly."

Opposite paragraph (5) he has made a mark 'X' and the endorsement is regarding 'X' :

"Alert municipality and police."

From this endorsement, it can be concluded that Prabhakar did take necessary action as suggested in Ex. 303, but the action was of a formal character. The position, however, relating to Exs. 304 and 310, stands on a different footing. Ex. 304 is a letter written by Nagarkar dated 1st July 1961 to the Collector mentioning the level of water in the Khadakwasla reservoir on 1st July 1961 and stating that all the 100 gates were kept open and was

let down into the river Mutha. It is further requested in that letter that all arrangements be made as usual, in case the emergency occurs. On this letter, the Collector has only put his initials. Deputy Chitnis, Dandavate, has made certain endorsements. In his deposition he has admitted that the endorsement below Ex. 304 is in his handwriting. So, if any action was taken, it was taken by the Deputy Chitnis on Ex. 304. Ex. 310 is a letter written by Nagarkar to the Collector on 10th July 1961 and it states that the lake at Panshet was full and it was likely to spill over and that the level in the Khadakwasla lake had risen by one foot in spite of the fact that all the gates were kept open. The only endorsement that has been made by the Collector in this respect is "Also inform Mr. Haveli". The other endorsements in the margin and the endorsement below the letter have been made by Dandavate and that is what he has stated in his deposition. The action required to be taken on the basis of Ex. 303 was of a formal and routine character. But, Exs. 304 and 310 reveal a more serious state of affairs and it was necessary to give some thought to the action to be taken on these letters. Evidently, the Collector himself has not applied his mind to the action to be taken on Exs. 304 and 310 and left the matter entirely into the hands of the Deputy Chitnis. The rhetorical argument, therefore, that if Prabhakar took prompt action on Exs. 303, 304 and 310, would he not have taken action on the message of Bhalerao that the dam was in danger, if he had received any such message from any quarters, loses all its significance. Again it is inaccurate to say that the Collector took no action whatsoever on the receipt of the message at Ex. 375(1). He did inform G. S. Joshi, Home Inspector, Rural. He must also have informed Heble about it. The following sentence in Jadhav Inspector's report Ex. 556, indicates that the Home Inspector (City) had conveyed the message to Jadhav :—

"With reference to the above subject, I submit that on 11th July 1961 at 6-45 hours information was received from H.P.I. to the effect that due to heavy rains Panshet dam is overflowing etc.,"

The inference, therefore, that can legitimately be drawn is that, notwithstanding the information regarding the gravity of the situation, the Collector and D.S.P. for reasons which they must explain took no steps at least in the city area. As will be pointed out later, even after receiving news about the alarming developments at Panshet from the engineers in the afternoon at 1-30 all that the Collector did was to take the engineers to Mohite, Divisional Commissioner, and discuss the matter with him about securing the aid of military engineers for carrying on the work of revetment at the sinking portion of the dam. He had not even thought of convening a meeting for devising steps for meeting the flood situation arising out of the possible breach of the dams. Not only this, on his own admission, he had not conveyed the message even to the D.S.P. and the Municipal Commissioner and it was only after the Divisional Commissioner communicated his own decision for convening a meeting that Prabhakar informed the D.S.P. and the Municipal Commissioner that a meeting would be held in the Divisional Commissioner's Office. It is quite clear from the evidence that left to himself, Prabhakar would never have convened a meeting of the officers for devising ways and means for meeting the flood situation. It is, therefore,

idle to contend that, merely because Prabhakar did not take proper action in the morning on the basis of Bhalerao's message, the conclusion that must be drawn is that he must not have received any such message. This is a typical case of the fallacy of 'non sequitur' and it is needless to pursue the matter further.

Another argument, which is equally fallacious, that has been strenuously urged on behalf of the civil authorities is that, could Prabhakar have failed to inform about Bhalerao's message to the Divisional Commissioner, Mohite, the Municipal Commissioner, S. B. Kulkarni and the D.I.G., Poona Range, Majeedullah, in the meeting held at the Divisional Commissioner's bungalow at 9-00 a.m. on 11th July 1961 for the purpose of establishing a cultural centre at Poona was attended by the aforesaid officers. Actually, Prabhakar's failure to mention the message to any of his colleagues is a point against him and requires explanation at his hands. It is not possible to ascertain whether Prabhakar referred to the receipt of any message from Bhalerao to his colleagues who were assembled in the Divisional Commissioner's bungalow for the meeting of the cultural centre. Some non-official outsiders also attended this meeting. It is, therefore, quite possible that Prabhakar would not have discussed any question relating to official matters including Bhalerao's message before such a gathering. There is no evidence either that Prabhakar mentioned to the gathering that the three engineers met him in the early hours of the morning and gave him information, which Prabhakar says was given to him by them, regarding the condition of the Panshet Dam. In any case, Prabhakar's failure to mention that fact cannot be made the basis for founding an argument, viz., that since he did not do so, it must be concluded that he did not receive Bhalerao's message or its substance at all. In the course of subsequent discussion regarding the action in the evening of the 11th July by Prabhakar, I will point out what type of man Prabhakar is. He is one of those officers who would deal with any question in a cavalier fashion and would make a claim, pretence or boast without any justification for the same. To anticipate, Prabhakar has put forward a tall claim that the arrangements made by him were sufficient even to meet the emergency arising from the breach of the Khadakwasla dam although such breach was never in contemplation. He also told Damry, who was telling him on phone that arrangements for the evacuation should be many times more than the number 6,500 which appeared to have been taken as the standard, that he had made all the arrangements and that they were sufficient for any emergency. It is also conceivable that Prabhakar mentioned the substance of the message received by him from Bhalerao to his superior, viz., Mohite, not in the course of the meeting but in an aside. It is equally conceivable that Mohite asked Prabhakar not to make too much fuss about it and refrain from doing anything which might create a panic. I will discuss the theory which holds considerable fascination for officers with bureaucratic tradition that alarming news should not, as far as possible, be published for fear of panic, at a later stage of this discussion.

There is another and more important indication to show that the Collector had received or had learnt about Bhalerao's message. At 06-07 hours on



the 11th July, one J. M. Kale, the operator at Khadakwasla sent a message Ex. 377, to Poona, to the following effect :—

“Reference Signal from Ex. Engineer, Panshet. Panshet dam in danger. Heavy flood expected. Wireless station of Khadakwasla is under the level of dam. Please solicit orders regarding shifting.”

The contents of this message were passed on to Police Wireless Inspector, Datar, on phone. The Superintendent of Police, Wireless, Poona, was mentioned as the informee in Ex. 377. It is an admitted fact that Nabar received this message and gave reply [Ex. 385(4)] to the same at 06-45 hours. It reads thus :

“Ref. my signal of yesterday regarding installation of wireless station at Panshet dam. The station must come on air by 10-00 hours today at Panshet. Dam is already in danger. Collector, Poona, has pressed for the station immediately.”

Police Wireless Inspector, Datar, was the addressee of this message and the contents of the message were passed on to him on the phone and also cleared on the channel. Nabar has admitted that he had a talk with the Collector at 6-30 a.m. before sending the message at Ex. 385(4). Of course, he says that at that time he (Nabar) had not received Bhalerao's message [Ex. 375(1)] or rather the message at Ex. 377 sent by the operator. According to Nabar, at 6-45 a.m. on the 11th July, he telephoned to the operator on duty at the Poona Headquarters Wireless Station and enquired whether a wireless station at Panshet had been installed. The operator told him (Nabar) that a message had been received from the Executive Engineer, Khadakwasla, saying that the Panshet dam was in danger. Nabar seems to suggest that he had not received the message Ex. 377 till 6-45 a.m. when he rang up the operator at the Headquarters to enquire whether wireless station was installed. This is highly improbable. The message was received round about 06-07 hours and it is impossible to believe that the message was not transmitted to the Wireless Superintendent, who was named as informee in the message for 38 minutes. Nabar had a talk with the Collector at 6-30 a.m. and Nabar admits that he put out the message at Ex. 385(4) after his talk with the Collector. Nabar has the audacity to say that the Collector did not tell him, at that time, that he (Collector) had received a message saying that the Panshet dam was in danger and that heavy floods were expected. He adds that at that time he had not received the message saying that the Panshet dam was in danger. No explanation has been offered as to how it is that Nabar did not receive a copy of the message at Ex. 377, which was received round, about 06-07 hour before 6-45 a.m. In the ordinary course, this message ought to have been received by Nabar within a few minutes after 06-07 hours, when the message was sent out. Nabar is positive about the time when the talk with the Collector took place and he says that that took place at 6-30 a.m. and he sent out the message to the telephone operator at 6-40 a.m. It is difficult to understand how Nabar is positive about the time of his talk with the Collector. The more important point to be noticed is that the contents of Ex. 385(4) completely believe Nabar's statement that he had not received the message at Ex. 377 before 6-30 a.m. or even before 6-45 a.m. or that the Collector did

not tell him that he (Collector) had received a message saying that the Panshet dam was in danger. I would emphasize the following sentences in the message at Ex. 385(4) :—

“The station must come on air by 10-00 hours today at Panshet. Dam is already in danger. Collector, Poona, has pressed for the station immediately.”

If these three sentences are read together, it is quite clear that the Collector was pressing for installing the station immediately, because he knew and told Nabar that the dam was in danger. It is an admitted fact that Prabhakar rang up Nabar and urged on him the need of the immediate installation of a wireless station at Panshet, while the two Superintending Engineers and Nagarkar were still sitting in his bungalow in the morning of the 11th July. It was suggested by Mr. H. R. Gokhale, counsel for the irrigation officers, in Prabhakar's cross-examination that, from the context of the sentences appearing in Ex. 385(4) it was clear that he had told Nabar that the dam was already in danger. It will be worthwhile to cite the question and Prabhakar's answer thereto (Ex. 421) :

“Q. Does it not appear from the context that you had told Nabar that the dam was already in danger ?

A. It does not appear so. In any case, I distinctly remember that I did not inform Nabar that there was danger to the dam.”

We do not want Prabhakar's comments on the interpretation of the plain language used in Ex. 385(4). Anyone who reads the sentences in their context will reach one conclusion and only one viz., that the Collector did press upon Nabar the immediate need of installation of a wireless set, because the Panshet dam was in danger and he told him so. It is mainly because of this plain meaning of the words used in Ex. 385(4) that I must reject Nabar's evidence, when he says that he was not informed by Prabhakar that the Panshet dam was in danger but that he learnt about it not from Ex. 377 but in the course of his reply message put out by him at 6-45 a.m. [Ex. 385(4)]. Another strange argument that has been put forward on behalf of the civil authorities is that none of the three engineers viz., Khursale, Desai and Nagarkar, has stated that any of them heard Prabhakar telling Nabar that he had received a message stating that the Panshet dam was in danger. It is not necessary for the witnesses to affirm or deny every fact that has been stated by another witness or witnesses. The non-mention may be due to various factors, such as want of questioning etc. If the rule were to be that every positive must be met by negative and every negative by positive, then the proceedings would never come to an end. Even in a court of law no such rule prevails and so far as the inquiry by a Commission is concerned, it has to proceed on broad lines and not on technical rules relating the need of affirmations or denials.

The conclusions that emerge from the above discussion are :—

(1) The Collector must have got the message at Exhibit 375(1) or in any case the substance was communicated to him by the engineers on the morning of the 11th.

- (2) Collector gave information in regard to the same to Home Inspector Joshi.
- (3) He must also have conveyed the information to the D. S. P., Poona.
- (4) For some in conceivable reasons, no steps were taken so far as the City of Poona is concerned, on the basis of the said message.
- (5) The operator who put out the message at Ex. 377 seems to have realised that the Panshet dam would breach causing heavy floods. That is why he requested for orders for shifting the location of the wireless station at Khadakwasla. Would not a similar realisation dawn on the Collector on receipt of the message at Ex. 375(1) ? This topic will be discussed in the succeeding section.

## SECTION 4

DID THE COLLECTOR TELL THE ENGINEERS ON THE MORNING OF THE 11TH JULY THAT HE WOULD ALERT PEOPLE WITHIN A BELT OF HALF A MILE ON BOTH SIDES OF THE MUTHA RIVER ?

That takes me to the second part of the talk between Prabhakar on one side and Khursale, Desai and Nagarkar on the other. Desai, in his written statement (Ex. 773), says :

“The Collector was informed by me of the message from Panshet and I requested him to make arrangements to alert people. He said that he also had received a message and that he was making arrangements to alert people between Panshet and Poona and down below and in Poona city for half a mile on either side of the river.”

Similarly, Khursale, in his written statement (Ex. 473), says :

“We three then went to the Collector at about 6-30 a.m. Shri Desai told him about the message and requested him to alert the people. The Collector told us that he had also received the same message and accordingly, he would alert the people in the city and the river-side villages from Panshet to Dhond in a strip of half a mile on either side of the river.”

Nagarkar has not specifically alluded to this part of the talk, because he says that while the talk was going on he put out a telephone call to Ghaisas, S. D. O., Mutha Canals Division and gave him instructions that he should immediately proceed to the Khadakwasla dam and arrange to post men at both ends of the dam. It is contended for the civil authorities that Prabhakar did not say anything of the kind viz., that he would alert people within a belt of half a mile on either side of the Mutha river between Panshet and Dhond and that it is impossible that the Collector would say anything of that kind. It is pointed out that when the engineers themselves have been expressing their inability to make a proper estimate about the extent of the floods, it is impossible to believe that the Collector, without having any data or basis for estimating the extent of the floods, would suddenly tell the engineers that he would give warnings within a belt of half a mile on either side of the river. The argument appears attractive and, therefore, has to be considered carefully.

In appreciating this line of reasoning, it is necessary to remember first of all the real significance of Bhalerao's message stating that Panshet dam was in danger and that heavy floods were expected. The message is cryptic. It does not mention the reasons which caused apprehension in the mind of Bhalerao about the safety of the dam. Desai was not even aware of the two disquieting features that had developed—one in the evening of the 10th and the other after 2-00 a.m. on the 11th July, viz., percolation through the downstream rock-toe above the conduit, and subsidence. Considerable argument has been built on behalf of the civil authorities regarding Desai not coming to know of either of these two developments. I will discuss this aspect at a later stage. For the time being, I am pointing out that the message of Bhalerao, cryptic as it was, was portentous and was sufficient

to cause alarm in the minds of those who heard about it. Bhalerao has deposed that his first idea was merely to convey the message that Panshet dam was in danger. On second thought, he felt the need of adding the words "heavy floods expected". If the two sentences are read together, then it becomes clear that according to Bhalerao Panshet dam would be breached and heavy floods would be caused consequent upon the breach of the dam. Evidently, Bhalerao was connecting the yield of heavy floods to the danger to the dam. It is, therefore, clear that he was thinking of heavy floods arising out of the breach of the dam. It was not necessary to know the nature of the trouble brewing at Panshet to understand the meaning and significance of the message. In this background, let me refer to the evidence of Khursale and Desai on this point and thereafter that of the Collector. In answer to questions in cross-examination, Khursale stated :

"None of us knew before we went to the Collector that the latter also had received similar information. We went to him before 6-30 a.m. As we were going to him and as his house was at a distance of about one furlong, I thought that the message could be communicated in person to him and not on phone. We went to him with two-fold object : (1) that the Panshet dam was in danger and that heavy floods were expected, and (2) that we would be going to the Panshet dam and would give a report on return. The first object also included the object of informing the Collector that he should warn the people against heavy floods. Shri Desai told him about the message and requested him to alert the people. The Collector told us that he had also received the same message and accordingly, he would alert the people in the city and the river-side villages from Panshet to Dhond in a strip of half a mile, on either side of the river..... It was mentioned to the Collector, in the course of the talk, that breach of the dam may occur. There was no talk about the extent of the flood. When the Collector told us that he would alert the people in the city and the river-side villages between Panshet and Dhond in a strip of half a mile, we were satisfied that this was an adequate measure, as an extreme step in view of an apprehended breach. It was a matter of guess that the extent of flood water would spread in a strip of half a mile on either side of the river. I had roughly an idea as to what areas or localities would be within the limit of half a mile on either side of the river in the city of Poona. This strip of half a mile would cover more than low lying areas on the banks of the river. I was not familiar with the areas of the Poona City, so I cannot tell which areas will actually fall within the above limit. Obviously this line would go beyond Jangli Maharaj Road, which was alerted. We accepted the suggestion and confirmed it."

Desai has stated in his cross-examination (Ex. 772) :

"We (myself, Khursale and Nagarkar) wanted to convey the message and give an idea of the consequences of that message. When I conveyed the message, he (Collector) told me that he had already received the message saying that the Panshet dam was in

danger and heavy floods were expected. None of us enquired from him about the source of the message. The words of the message viz., there was danger to the Panshet dam and heavy floods were expected, were clear. The words "heavy floods expected" imply the possibility of the breach of the dam. The Collector did not ask for any clarification from us on this point, because apparently it was not necessary. He said that he would give warning to the people residing in a limit of half a mile on either side of the bank of the Mutha river from Panshet right up to Dhond. I said that that would be all right."

(Note.—The quotation is not continuous, but comprises sentences at different places.)

These answers were elicited in cross-examination. In answer to questions by Mr. Ghaswala, Desai stated :

"I could not make out from the message what was the danger to the dam. I did then know the nature and extent of floods. But the words "heavy floods" in the message implied a possible breach of the dam."

In answer to further questions, Desai stated :

"By danger to the dam, we understood that there was a possibility of the dam breaching and floods consequent thereupon would be heavy. We, therefore, felt it imperative to alert the civil authorities about the incoming of floods so that they could take necessary action. The other matter we considered was to go and devise remedial measures. The question of urgency of sending a mobile wireless van to Panshet was not discussed. I deny the suggestion put to me that when we went to the Collector, we were assuming that the Panshet dam had already breached. Had the dam breached, the message would have clearly stated that."

It is surprising that Mr. Ghaswala, on behalf of the civil authorities, should put forward a suggestion that the engineers were proceeding on the footing that the Panshet dam had already breached. By putting forward such a suggestion. Mr. Ghaswala was accepting the position that according to the engineers, the situation was very grave. At a later stage of cross-examination, Desai stated :

"When I conveyed the message, the Collector told me that he had already received that message. The Collector himself told us that he was going to alert the people living within the limits of half a mile on either side of the river. The Collector immediately said that he would alert the people. Therefore, there was no question of my telling him to do so."

Nagarkar has also stated that Desai told the Collector that the people in Poona city should be alerted as also the people living between Panshet and Dhond. It is, therefore, clear that the Collector was apprised of the gravity of the situation. The possibility of the dam breaching was hinted and he was warned that heavy floods would be released. He was also warned that it was necessary to alert the people living on the banks of the Mutha river from Panshet to Dhond including people in the city of Poona. If this position is accepted, then the question that would naturally arise is, to what areas the warnings were to be given. The case for Desai and

Khursale is that the Collector himself proposed to give warnings to the areas within a belt of half a mile on both sides of the river and therefore, there was no need of any further discussion about the extent of floods etc. Before proceeding further, it is necessary to remember that the Collector has gone to the length of denying that Bhalerao's message was conveyed to him. I have rejected that position for reasons discussed above. If that view is correct, then there must be some reason as to why the Collector is running away from the position that Bhalerao's message was conveyed to him. The reason for this escapist attitude is that, once it is conceded that such a message was conveyed to him, then it would inevitably follow that the question of alerting people would come up and also the question of the limits of the areas to which warnings should be given. By denying the first part, the Collector has shown guilty consciousness on his part about the grave implications of the message. Furthermore, once we come to the conclusion that the Collector is not disclosing the truth when he says that he did not receive the message, then, it would be difficult to give any credence to the second part of his story. It is true that the manner in which the limit of four furlongs on either side of the river is alleged to have been mentioned by the Collector is somewhat abrupt. But, the question inevitably arose, because Desai emphasised the need of giving warnings to the people. It may be, there was some discussion between the engineers on one side and the Collector on the other. It may also be that in the course of the discussion the belt of half a mile on either side of the river was arrived at to err on the safer side. It may as well be that the engineers do not fully remember the context of the discussion. Even assuming that the subject about the belt of half a mile was brought up by the Collector on his own, I cannot see why that should be regarded as unnatural. When the question of alerting the people arose, the Collector, as the administrative head of the district and the person in charge of the lives and properties of the people, had the responsibility of taking some decision, rough and ready as it may be. It was not necessary for the Collector to make calculations nor was it possible for him to do so regarding the extent of floods. As a man of commonsense and as an administrator he would make rough and tumble estimate and ask the engineers whether it would be enough if warnings were given to the areas within a belt of half a mile on either side of the river. The contention that the engineers themselves had expressed their inability to assess the extent of floods will be considered subsequently in all its implications. At this stage, it is necessary to observe that when the engineers stated that they were not in a position to calculate the extent of the floods, they were talking as technicians and engineers. They were not talking as laymen. When the question of calculation arose they would shy away from it as enormous difficulties would present themselves and the need of making assumptions would also stare in their face. No administrator is bound by these inhibitions. He has to make some guess and take some risk and in doing so, he would always try to err on the safer side. As will be pointed out later, during the floods of 1958, S. E. Maydeo, also was reluctant to make an estimate of the extent of floods as a result of the breach of Khadakwasla dam. Mone, the then Collector pressed Maydeo to give some rough estimate. It was thereafter Maydeo

made an attempt at formulating an estimate regarding extent of floods. This shows that the administrator considers it to be his primary responsibility to give warning to areas which are expected to be affected by floods. The Collector must have heard that the floods of 1958, which were the highest in recent times, had spread to a limit of a furlong and a half on either side of the river. These floods were caused by heavy rains and breach of the dam did not play any part in that. On the 11th July 1961, on the basis of Bhalerao's message, the Collector was envisaging the possibility of the breach of the Panshet dam. In these circumstances, if as a man of commonsense he jumped from one furlong to four furlongs, I cannot see how there is anything unnatural or improbable about it. That the Collector did not actually inform Joshi, Home Inspector, Rural, or the Mamlatdar that warnings should be given within a belt of four furlongs on either side of the river is again neither here, nor there. His subsequent inaction or want of adequate action, which itself requires explanation, cannot be turned into a matter of advantage for the Collector.

There appears to me to be another reason as to why the Collector and the District Superintendent of Police, Poona City, are shying away from Bhalerao's message and that is that, practically no action was taken by the District Superintendent of Police, in the city of Poona although some action was taken by the Home Inspector, Rural, on receipt of the message from the District Magistrate (Collector).

There is some indication that Kekre, Home Inspector of the District Superintendent of Police, Poona City, had come to know about the danger to the Panshet dam before 6-45 a.m. on the 11th July. Exhibit 556 is the report submitted by R. K. Jadhav, Police Inspector, Faraskhana Police Station, to the District Superintendent of Police, Poona, City, on 1st August 1961. The report begins with the following sentence :—

“With reference to the above subject (work done by police personnel on flood day and onward), I submit that on 11th July 1961 at 6-45 hours an information was received from H. P. I., to the effect that due to heavy rains Panshet dam is overflowing and that water is being released through safety gates due to which the river passing through Poona may overflow. As such all available men of police station be kept in readiness at their chowkies.”

The expression “Panshet dam is overflowing” is highly significant. Although the words “Panshet dam is in danger” are not used, still the words used here viz., Panshet dam is overflowing, do indicate danger to the Panshet dam. Further, the words “the river passing through Poona may overflow” are also significant. Jadhav was not examined and his report was admitted in evidence without proof. Mr. Phadke, on behalf of the Citizens' Committee, cross-examined Kekre on this point and Kekre made the following statements (Ex. 871) :—

“On the morning of the 11th, I had information to the effect that due to heavy rains, the waste weir channel was overflowing and that water was being released through the regular conduit. I conveyed this information to Inspectors Jadhav, Risaldar and the Inspector of Deccan Gymkhana Police Station. I did not give information to Inspector



Jadhav that, due to heavy rains, Panshet dam was overflowing and water was being released through safety gates due to which the river passing through Poona might overflow. My attention is invited to the above statement contained in Jadhav's report at Ex. 556. I maintain that Jadhav had written wrong words about the information, I gave."

Evidently, Kekre is denying having used the words attributed to him by Jadhav in his report at Ex. 556, because he has understood the implication of those words, which is that, it did convey an idea about the danger to the Panshet dam. If Kekre had information with him indicating danger to the dam, then, he must explain the source. Evidently, that source would be the District Superintendent of Police, Poona City. It is necessary to remember that the message sent by Bhalerao was received at the wireless Headquarters, Bhamburda and Vishrambagwada. The operator, is for certain purposes, subordinate to the District Superintendent of Police. When the operator conveyed the message on the phone to the Superintending Engineers, Deccan Irrigation Circles Nos. 1 and 2, Superintendent of Police, Wireless (Nabar) and the Collector does it stand to reason to suppose that he did not convey it on phone to the District Superintendent of Police, Poona City, or at any rate to his Home Inspector? After the Home Inspector learnt about this message, would he not have conveyed the same to the District Superintendent of Police? I am, therefore, inclined to the view that both the Collector and the District Superintendent of Police are anxious to suppress the message of Bhalerao, because they want to cover up their inaction for the whole of the morning and major part of the afternoon of the 11th July 1961. A suggestion was put by Mr. Phadke to Kekre in his cross-examination stating that the police officers in the city were aware on the morning of the 11th July that the situation at Panshet dam was serious. Though this suggestion was denied by Kekre, his action in informing the three Police Inspectors and in particular, Inspector Jadhav, about the overflowing of the Panshet dam, is clearly indicative of his having been aware of Bhalerao's message.

The upshot of the above discussion is :

- (1) The Collector realised that the dam would breach and heavy floods could arise as a result of such breach.
- (2) During the floods of 1958 which was due to natural causes such as heavy rains, water had spread to an extent of one or one and half furlong. The Collector would proceed on an empirical basis and surmise that the floods caused by breach of Panshet dam would spread wider and might cover four furlongs on either side.
- (3) Collector got this estimate confirmed by the engineers at the discussion.

## SECTION 5

## WHAT WAS THE APPRAISAL OF THE ENGINEERS OF THE SITUATION AT PANSHET ON THE MORNING OF THE 11TH JULY 1961 ?

After their talk with the Collector in the early hours of the morning of the 11th July, Khursale and Desai left for Panshet to see the situation at the dam site for themselves. Before, that, they had a talk with Panse. Panse told them about the subsidence. He did not, however, mention the percolation coming through the downstream and of the rock-toe above the conduit. The meeting of the two engineers with Panse took place after their interview with the Collector. It is thus clear that the two engineers came to know about the alarming development of subsidence of a portion of the embankment after their meeting with the Collector. Panse has admitted that in the course of his meeting, he did not mention to the two engineers that percolation was noticed at the downstream end of the rock-toe above the conduit. Panse (Ex. 223) was cross-examined by the Commission's counsel and he admitted that he only conveyed the message that the embankment had sunk in a portion of about thirty feet in length and about seven feet in depth. He explained that it did not occur to him then to give information about the leak. Some argument is sought to be built on account of Panse's non-mention of an important phenomenon such as, appearance of the leak, and it is pointed out that Panse, who had come to Poona to give information about the latest position at Panshet at the instance of Bhalerao, would not withhold the vital information unless he had instructions to do so from Bhalerao. There is no substance in this argument at all. Khursale and Desai were to proceed to Panshet that very morning and they would have seen for themselves that there was a leakage. There was, therefore, no point in suppressing the information from these two engineers for a short period of a few hours. It is nobody's case that any information was given by the two engineers to the Collector after their discussion with Panse. So, Panse's failure to mention one of the two facts has no significance in the case at all and Panse's frank admission that it was through oversight that he failed to do so appears to be natural and therefore will have to be accepted. Panse must have been in a perturbed state of mind and this may account for his failure to mention the fact about the occurrence of leakage. Nor do I think that it was in any way necessary for Khursale and Desai to convey information about the subsidence to the Collector after their talk with Panse. Sufficient information was already given to the Collector about the alarming situation at Panshet and the two engineers had promised that after their reconnaissance they would go back and report the matter to the Collector. The Collector, therefore, would not have been any the wiser by learning about the subsidence nor about percolation. He already knew that the dam was in danger.

After their discussion with Panse, Desai telephoned to Padhye at Bombay and informed him about the serious situation at Panshet. He added that he would be going to Panshet immediately and would report again after coming back from Panshet. Since Desai was not informed by Panse about percolation, Padhye asked Desai to look out for percolation or a leak at the

downstream end. Khursale has not stated anything about this telephonic talk. In answer to 'questions' in cross-examination by Mr. Ghaswala, Khursale stated (Ex. 472) :

“When Panse told us that the dam was sinking, we knew that the situation was serious. .... We did realise that if sinking did not stop the dam would be overtopped. We knew that overtopping of an earthen dam was dangerous. Bag-stacking was not a remedy for saving the dam. It was a remedy for maintaining a free-board,..... At that stage, we did not contemplate any other remedy except stacking the bags. We did not think of any remedy then of preventing the sinking. Even if the bag-stacking operations were continued uninterruptedly for a long period of time, it would not be of much use so long as the process of sinking had not stopped. After the talk with Panse, we left for Panshet. We did not consider it necessary to send a second message to the Collector after discussions with Panse, because we wanted to inform the Collector about the details of situation after our return from Panshet.”

(The quotation is not continuous).

No question was asked to Khursale about the telephonic talk between Desai and Padhye. Padhye, in his written statement (Ex. 131) has supported Desai's statement. The message to Padhye was really meant for Manerikar, Additional Chief Engineer, and Padhye did communicate the substance of the message received by him from Desai to Manerikar at about 9-15 a.m. on the 11th July. Manerikar, in his cross-examination (Ex. 663), stated that since settlement had taken place in a portion of the dam, he did not consider the news as alarming. He added that the extent of settlement was not indicated. He further added that he regarded that settlement as being due to differential settlement in the temporary waste weir. He also added that Padhye did not indicate that he considered the development as alarming. It would thus be seen that there is divergence of opinion with regard to the effect of subsidence. In Khursale's view sinking of the dam even at a small portion was a dangerous phenomenon and bag-stacking was no remedy for the malady of subsidence as such. By stacking the bags, the engineers could try to build up a free-board, which was being reduced as a result of sinking. Khursale was a man on the spot and had seen the situation for himself, a little later after Desai sent a message to Manerikar. Manerikar was not apprised about the extent of sinking. Manerikar and Padhye apparently felt that subsidence may be ordinary or natural subsidence or due to differential settlement. The views of the engineers would depend upon the data supplied to them. Relying on the divergent views expressed by the engineers, it has been contended for the civil authorities that the engineers themselves were not taking the matter seriously, that they never felt that the situation was alarming and that Manerikar has frankly admitted that on receipt of Desai's message conveyed to him by Padhye that there was settlement in a portion of the dam, he did not consider the situation as alarming. I am unable to understand what relevance this argument has with the question as to what information was conveyed to the Collector in the morning. It is nobody's case that either Desai or Khursale went back to the Collector and told him that they themselves did not consider the situation as alarming

and that the settlement might be a differential settlement. Manerikar has stated that on receipt of Desai's message through Padhye he did not consider the situation as alarming. He has admitted that the extent of settlement was not indicated and all that he was told was that there was some settlement. It appears that Manerikar himself drew an inference that it must be in a small portion, and, therefore, he regarded it as being due to differential settlement. As a matter of fact, Manerikar and Padhye should have got more particulars about the situation from Desai in the morning, and, therefore, their appreciation without obtaining details of the situation could not be of any avail to the civil authorities.

Anyway, we are not concerned with Manerikar's or Padhye's appreciation of the situation, because they do not come into the picture, so far as conveying information to the civil authorities is concerned. Again, their appreciation has no relation, whatsoever, to the appreciation of Desai and Khursale. It is clear that the appreciation of Manerikar and Padhye is not based on the appreciation of Khursale and Desai. They had formed their views on their own assumptions and inclinations. Manerikar and Padhye attached more importance to percolation, because percolation may be due to piping, which is by itself a dangerous phenomenon. Bhalerao, Khursale and Desai attached greater importance to subsidence, particularly because the subsidence was continuous and was going on for twenty-four hours in spite of the attempts of bag-stacking on the sinking portion on a large scale. Khursale has clearly stated that bag-stacking was no remedy to subsidence at all and, at best, it may help in maintaining a free-board. This appreciation of the situation by the engineers on the spot is in no way affected by the views formulated by Manerikar and Padhye from a distance and on insufficient data.

## SECTION 6

VISIT OF M/S. KHURSALE AND DESAI TO PANSHET AT 10-30 A.M. ON 11TH  
JULY 1961 AND THEIR APPRECIATION OF THE PANSHET SITUATION

After their talk with Panse, Khursale and Desai left for Panshet at about 8-30 a.m. and reached there at about 10-30 a.m. The two engineers accompanied by Bhalerao visited the place where the settlement was taking place. Desai in his written statement (Ex. 773) stated :]

“It was noticed that a portion above the conduit had settled in the upstream casing zone and murum bags were being laid in that portion. Also oil drums filled with water were placed on the sides. A length of about 25 ft. to 30 ft. which had settled down and was being kept above water level by putting in murum bags to a level of 4 ft. or so above the water level which was at 2067. .... The work was being done round the clock by about 200 people drawn from all categories including fitters etc.

The downstream toe on the conduit side was also inspected by going down to the slope on the right side. It was seen that a flow of about five cusecs was running down the left bank edge of the conduit through the rock-toe. The water was observed to be of the same colour as in the lake. The conduit was seen practically running full only about six inches to nine inches at the crown was seen clear. Probable causes of such a leak were discussed with the field officers present there, viz., Bhalerao, Sakhalkar and Bhagwat. Mr. Khursale expressed that such a leak is not a good sign, but no definite conclusion could be arrived at.”

At a later stage of his written statement, Desai, says :

“The consequences of a breach in the dam were also discussed. It was opined that if the breach restricted itself to the temporary waste weir channel, where it was sinking, the discharge likely to pass down would be of the order of the 1958 floods, but if the breach spread over a longer length, a very much higher flood would occur — the extent depending on the length of the breach and the time it takes to cover that, and it will not be possible to forecast the same. The possibility of the old Khadakwasla dam being in danger in case of the breach was also envisaged. Mr. Khursale suggested that we should not lose time and try to get army help as quick as possible. So, we decided to go back to Poona immediately.”

In answer to questions by Mr. Phadke, Desai stated :

“We were sure that subsidence, which was taking place, was not a normal settlement, which might take place as a result of lake having been filled up quickly. .... We were unable to arrive at any conclusion about the possible origin of the flow..... We were convinced that there were no means of stopping subsidence. We had just a stray hope that subsidence may come to an end as a result of internal rearrangement or by providential intervention.”

In his cross-examination Mr. Ghaswala put forward a specific theory by way of suggestion to Desai, viz., that he and Khursale had reached the conclusion that subsidence was due to leakage, and the witness denied that suggestion. I do not understand the meaning of the theory that subsidence was due to leakage. Ordinarily, the theory would mean that leakage was due to piping and in the process of flow of water from the reservoir to the downstream through the pipe, the flow was carrying the embankment material, which resulted in subsidence. In other words, the counsel was propounding the theory of what is technically known as piping. Once Mr. Ghaswala concedes, as appears to be the case from his suggestion put to Desai, that the engineers had arrived at the conclusion that a pipe was formed through and through the embankment, then it is clear that the dam was doomed, and even an ordinary engineer, fresh from University, knows that nothing can save an earth dam once a pipe is formed. By putting forward such a suggestion Mr. Ghaswala has not realised that he was weakening his own defence that according to the engineers there was no danger to the Panshet dam and that was exactly what they conveyed to the civil authorities in the afternoon of the 11th July (according to their case).

Proceeding further, I may refer to one or two more passages in the evidence of Desai. In answer to questions by Mr. Ghaswala, Desai stated (Ex. 772) :

“We were not able to ascertain the cause of the subsidence nor the cause of leakage. Since we did not know the cause of subsidence and the cause of leakage, we could not devise any remedy for stoppage of the same. We, therefore, depended upon intervention of the nature for helping us to save the dam. The bag-stacking operation was in the nature of a palliative. Our object was to gain time, so that in the meantime nature may intervene.”

These answers would clearly indicate that according to Desai, the situation at Panshet was hopeless and the engineers were depending upon providential intervention to save the dam. Khursale's views were similar in this regard. In his written statement (Ex. 473) at paragraph 5(d) itself, Khursale has stated :

“I told Desai and Bhalerao that this leakage was very dangerous. The laying of murrum bags has to continue non-stop in the hope that the sinking may stop and the leakage may reduce by some chance.”

In answer to question by Mr. Phadke, Khursale stated :

“The process of subsidence was continuous but was slow from morning to evening on the 11th. The hope of saving the dam would arise only if the subsidence stopped completely. The hope of saving the dam was more in the nature of a chance. We had some hope that sinking would stop because there was not much distress on the rear side. Any leakage through the dam is itself dangerous. .... Percolation may be due to seepage or piping or some unknown cause. .... The phenomenon of sinking coupled with the fact that the top of the dam at the sinking portion was at a lower level than the designed one was more serious than the discharge of water.”

Khursale thereafter referred to an incident which took place while he was in charge of Tungabhadra dam, which was a composite dam—masonry on the upstream side and earthen on the downstream side. Khursale stated :

“The sinking of the Tungabhadra dam went on for about five or six hours and then came to an end. The sinking was going on in the earthen portion of the dam. The sinking was in the shape of a well which went on deepening. Water used to surge up in that well. This was inexplicable. All of a sudden, sinking came to an end. It was discovered later that the steel plate in the pipe below the sinking portion had gone and that was the reason why the dam was sinking.”

It was as a result of this experience that Khursale was depending upon the happening of a chance event and Desai was probably infected by the same spirit. In answer to questions by Mr. Ghaswala, Khursale made the position about his view and Desai's view clear regarding the position of the Panshet dam :

“On the whole, our appraisal was that the situation was more serious than what was reported to us till then. We did not then think that the situation was beyond remedy. We felt that there was some slight hope of saving the dam, if the sinking could be stopped. We did not visualise any remedy to stop the sinking. We hoped that God may help us and crown our efforts with success. Having seen the situation, I felt that by some chance sinking may stop and the dam may be saved. I am not prepared to use the word ‘miracle’ in that connection.”

Bhalerao (Ex. 232) in answer to questions by the Commission stated as follows :

“Till the 11th morning we were hoping that the dam may be saved. The hope could not be regarded as unreasonable because sometimes the structures behave in a peculiar way and the mal-functioning stops all of a sudden. I had a discussion with Mr. Khursale and he cited the instance of a composite dam (up masonry with earth backing) on Tungabhadra river. .... By the evening of the 11th, I realised that it would not be possible to save the dam. I reached the conclusion because the subsidence never stopped, and it was a continuous process. Desai and Khursale also had reached the conclusion in the morning of the 11th that if the process of subsidence was continuous and went on for some more hours, say, till the evening, then the dam may not be saved. In the course of our discussion in the morning itself, we had come to the conclusion that the efforts that we were making may not be crowned with success. .... I did not think it necessary to highlight the aspect about the hopelessness of the situation or imminence of danger to the dam in any of the messages, because that conclusion was reached in a meeting attended to by the superiors.”

Incidentally, this cross-examination by the Commission will demonstrate the utter falsity of the remarks made repeatedly in the written arguments on behalf of the civil authorities that my cross-examination was always intended for the benefit of the irrigation authorities and was meant for eliciting matters, which were unfavourable to the civil authorities. This is a small digression. The points, which emerge from the evidence of these

three irrigation officers at the end of the survey undertaken by them after 10-00 a.m. on the 11th July, are that they had reached definite conclusion that—

(1) the subsidence was continuously going on,

(2) the attempt at bag-stacking was only having a marginal success to the extent of keeping a precarious free-board, and

(3) they could not devise any remedy for stopping the subsidence, and laying down the bags was just an improvisation so that time could be gained and something or the other might happen (call it miracle, call it chance or call it supernatural intervention), which alone could possibly save the dam.

It has been contended on behalf of the civil authorities that the irrigation officers have improved upon their versions in their written statements in regard to the appraisal of the situation made by them as a result of their morning visit to the Panshet dam. I have carefully gone through the relevant parts of the written statements and the depositions and I find that, except for minor variations, the position taken up by these officers in their depositions is substantially the same as they had taken up in their written statements. It is significant that in his written statement (Ex. 473) at paragraph (5), Khursale did mention that the situation was very dangerous and that the only hope was that the sinking might stop and leakage might reduce by some chance. Reliance on an element of chance is not a matter introduced for the first time in the course of the inquiry. It is necessary to remember that this idea of chance intervention or supernatural intervention was Khursale's idea which suggested itself to him by his previous experience at Tungabhadra dam. We cannot interpret a word here and a word there in the written statements as if they are words of a statute and shear them out of their context. For instance, a good deal of argument has been built up on the basis of the following statement made by Bhalerao in his written statement (Ex. 233) :

“Remedial measures to prevent overtopping were also discussed.

The S. E., D. I. C., I. (Shri Khursale), said that preventing overtopping by putting as many murum bags as possible was the only way to prevent the disaster.”

This sentence does not necessarily mean that by puffing murum bags overtopping would be prevented. The idea meant to be conveyed in this sentence is that the only possible way of preventing overtopping was laying down of murum bags in large quantity. Arguments can be and are usually advanced in a court of law in both ways. If the versions of the witnesses are identical, then it is contended that this is a sure sign of tutoring. On the other hand, if there are variations, it is argued that there are discrepancies and therefore the versions are unnatural. Such inconsistent arguments have been advanced on behalf of the civil authorities in their written arguments as the occasion demanded. When witnesses are setting out versions of what took place some months back in the form of written statements, they might omit to mention the details either because they felt that the written statements would become unduly prolific or because they did not remember all the details vividly. In the course of close questioning,



the witnesses may remember a few more things and we have to take the overall picture into consideration and appreciate the evidence from the point of view of broad probabilities and not with reference to some minor discrepancies here and there. Anyone who goes through the written statements and depositions of these three irrigation officers will be convinced that the variations, if at all, are on very small points and they are obviously of an insignificant character.

There is another aspect arising out of the visit of the engineers to the Panshet dam and the discussions held between them, which has considerable bearing upon what these Engineers told the Collector and the Divisional Commissioner in the afternoon and I will now advert to that aspect. That aspect relates to the question as to whether the Engineers made any assessment about the extent of floods.

## SECTION 7

DID THE ENGINEERS FORM ANY ESTIMATE ABOUT THE EXTENT OF FLOODS  
CONSEQUENT UPON THE BREACH OF THE DAM ?

Desai, in his written statement (Ex. 773) stated :

“The consequences of the breach in the dam were also discussed. It was opined that if the breach restricted itself to the T. W. W. channel, where it was sinking, the discharge likely to pass down would be of the order of 1958 floods. But, if the breach spread over a longer length, a very much higher flood would occur, the extent depending on the length of the breach and the time it takes to cover that, and it will not be possible to forecast the same. The possibility of the old Khadakwasla dam being in danger in case of the breach was also envisaged. Shri Khursale suggested that we should not lose time and try to get army help as quick as possible. So, we decided to go back to Poona immediately.”

Reliance is placed on behalf of the civil authorities on the expression “it will not be possible to forecast the same” and it is argued that this indicates that the engineers always held the view that it was not possible to form any estimate about the extent of floods. I will discuss this question at some length while dealing with the talks that took place between Desai and Khursale on one side and Mohite and Prabhakar on the other. For the time being, it is sufficient to observe that reading as a whole, the sentence does not postulate the utter impossibility of making any forecast but it only mentions the various difficulties, and the assumptions required to be made in making an estimate. In any case, it is clear that the engineers did say that in case the breach spreads over a longer length, a very much higher flood than the flood of 1958 would occur. In answer to questions by Mr. Ghaswala, Desai stated :

“While I and Khursale were returning from Panshet to Poona on the morning of the 11th in a car, we were discussing among ourselves the possible distance to which the flood water may travel in the city of Poona on account of the breach of the Panshet dam. We arrived at the conclusion that whatever was discussed with the Collector in the morning viz., that the distance will be half a mile on either side of the river, was fairly correct. We did not calculate the height to which the flood water would rise nor the localities which may be submerged by the flood water. The figure of four furlongs on either side of the river was a matter of guess and was not based on any calculations. I do not know whether the flood water of 1958 reached beyond the limit of four furlongs on either side of the river. It was roughly at that distance on either side.”

Desai had made a clear distinction between an estimate based on calculations and rough estimate or intelligent estimate. While according to him an estimate based on calculations depended upon several assumptions, a rough guess could be ventured and the Collector's decision to warn localities within a belt of four furlongs on either side of the river was practical and based on sound commonsense. Through the whole of the arguments, the learned advocate on behalf of the civil authorities has failed to make a distinction between the two positions viz., an approximately correct estimate based on calculations and a rough and ready estimate based on previous experience and sound commonsense.

Khursale, in his written statement (Ex. 473) at paragraph 5 (e) has stated :

“If the settlement continues and the dam overtops, I added, there would be breach, causing incalculable disaster in Poona. The Khadakwasla dam may also breach and add to the disaster. After some mental calculations,

I further told them that if perchance the breach were to be restricted in the outlet portion where the earth was sinking and where there was a deep rock cut, the flood would be about the same as in 1958. But, if it spreads out, it would cause incalculable disaster in Poona."

This has reference to the talk that took place between the engineers *inter se* in the course of their visit to the Panshet dam. In answer to questions by the Commission's counsel, Khursale stated (Ex. 472) :

"The mental calculations to which I have referred in paragraph 5 (e) of my written statement (Ex. 473) are as follows :"

Then, Khursale gives the formula, which it is not necessary to quote here. He has further stated :

"The above figure gives the flood discharge coming from Panshat down to Poona.....After giving him (Padhye) the water level and other details at Panshet, I asked him (Padhye) to calculate the flood discharge. I did not mention the calculations which I had made. Although I had made my own calculations, I wanted to have them checked by Padhye. I did not think it necessary to give my own calculations although the object was to have my calculations verified. He (Padhye) told me that he would let me know. I did not ask either Desai or Bhalerao to make calculations. I asked Padhye because he was a man from the C. D. O. and was expected to know better. I did not mention the formula either to Desai or Bhalerao. I have however mentioned the results of the calculations..... My calculations were restricted to the quantity of discharge on the assumption that the breach would be restricted. I had visualised that Khadakwasla dam would breach. If Khadakwasla dam breached, then my calculations would be upset."

In the written arguments submitted on behalf of the civil authorities, only the last three sentences have been quoted and a good deal of argument is built on the basis of these three sentences shorn from their context. It has been contended that if Khursale proceeded to make calculations without taking the possibility of the Khadakwasla dam breaching into account, then it means that he did not envisage that possibility; if he did not envisage that possibility, then it follows that he did not and could not tell the Divisional Commissioner and the Collector in the afternoon that the Khadakwasla dam was sure to breach on the breach of the Panshet dam. This whole argument is based on a misconception. What Khursale stated was that the formula applied by him was only based upon the breach of the Panshet dam and it is obvious that any such formula could not work, if some other factor such as the breach of the Khadakwasla dam would come into the picture. The answer has reference to the formula and has nothing to do with the possibility of the Khadakwasla dam breaching or not breaching, and Khursale's statement that the calculations would be upset in case of the breach of the Khadakwasla dam has no relevance whatsoever in considering whether, as a matter of fact, the engineers told the Divisional Commissioner and the Collector that the Khadakwasla dam being a weak and old dam, was likely to breach in the event of the breach of the Panshet dam. In answer to questions by Mr. Ghaswala, Khursale stated :

"The extent of the floods depends upon the extent of the breach in the dam and several other factors. It was not possible to estimate the extent of the floods to *near correction*. I had made mental calculations about the extent of the floods on the assumption that the breach was restricted on the outlet portion. All of us agreed that if the breach spreads, *near approximate calculations* were not possible."

In the written arguments submitted on behalf of the civil authorities, only the last two sentences have been quoted and unfortunately, they have been quoted wrongly. The citation probably depends upon the first version as typed by the typist. On the very first day of hearing, it was noticed that the typists were not in a position to type the depositions accurately. The following procedure was, therefore, adopted for finalising the draft. The witness was to correct the first draft before putting his signature and then the Commission again would go through it and correct the inaccuracies. The corrected draft (with corrections made in the witness's hand) was placed in the inspection set which was available to all the advocates for corrections of first copies given to them for the convenience of their reading and preparation. This arrangement was agreed to by all the advocates. In the absence of such understanding, the advocates would not get copies when they needed them most, as copies of corrected depositions would become available after a lapse of some days. Accordingly, Khursale corrected the sentence and the corrected sentence is quoted by me above. The sentence, as cited, in the written arguments runs as follows:—

“I had made mental calculations about the extent of the floods on the assumption that if the breach was restricted on the outlet portion, all of us agreed that the breach would be so, mere approximate calculations were possible.”

As it is, the sentence or the sentences makes no meaning. Although copies of the first version of the depositions were given to the counsel and advocates so as to enable them to prepare for cross-examination next day, they were specifically told that they should get their copies corrected after going through the original which was corrected by the witness as also by the Commission. It is extremely unfair on the part of the lawyers representing the civil authorities to cite a passage from an uncorrected version of the deposition, which was handed over to them as a matter of convenience. Basing themselves on this wrong version, a good deal of argument has been advanced on behalf of the civil authorities. It is impossible that any engineer would say that the breach of an earthen dam would restrict itself to a small portion, in the present case, the outlet portion. The greater likelihood is that the breach would spread wider so far as an earth dam is concerned. In any case, no engineer would say that near approximate calculations were not possible even when the breach restricted itself to the outlet portion. But, it is not necessary to proceed on hypothetical considerations. The version of Khursale's statement, which is corrected by him and which is authoritative, must form the basis of any argument and discussion in that respect. It is clear from the deposition of Khursale that it was not possible to estimate the extent of floods to near correct calculations. That again makes it clear that when an engineer talks of calculations, he talks of approximately correct or near correct calculations or estimates of the extent of the floods.

The upshot of the above discussion is that the engineers had reached the following conclusions:—

- (1) If the subsidence continued, say, till the evening of the 11th, then the dam was doomed.
- (2) Bag-stacking operations should be continued uninterruptedly and the help of the army should be secured for continuing that work in the hope that some chance occurrence would take place and the subsidence came to an end.
- (3) If the Panshet dam breached and the breach restricted itself to the outlet portion, then the floods would be of the order of the floods of 1958. But, if the breach widened, then there would be incalculable disaster.

(4) In any case, the rough and ready device adopted by the Collector of giving warning within a belt of half a mile on both sides of the river would be sufficient to cover any eventuality.

Before leaving this topic, it is necessary to refer to the arguments advanced on behalf of the civil authorities that Bhalerao was shown a special favour by the Commission by reason of the fact that his evidence was first recorded on 15th March 1962 and postponed to 29th June 1962. Bhalerao was examined first on 15th March 1962 on the distinct understanding that his evidence would be restricted to technical aspects of the matter and that his evidence relating to the events of the 10th, 11th and 12th July 1961 would be postponed till, at any rate, the wireless messages were brought on record. It may be noted that after the examination of the wireless operators and some other evidence, a new theory was propounded by Dr. K. L. Rao relating to piping. Dr. Katti had propounded his own theory of relative settlement of sides prisms, as a result of improper compaction in the T. W. W. section. Mr. H. R. Gokhale, counsel for the irrigation officers, requested that Bhalerao should be examined after Katti's and Dr. Rao's evidence was over, because Bhalerao would be in a position to meet the points made by Katti and Dr. Rao. The convenience of the Assessors also had to be considered and it was necessary to examine as many expert witnesses as possible in their presence. That is why Bhalerao's deposition was resumed after the deposition of Dr. Rao. It is true that Desai was attending the Commission's sittings, but, he was examined as a last witness. This arrangement was not made by the Commission but by the Commission's counsel. It may be mentioned that the Commission was not following the technicalities observed in a court of law. Ordinarily, in a court of law, when one witness is being examined, the witness, who is to follow, is not allowed to sit in the court during the examination of the previous witness. In the present case, no such restriction was imposed on any witness and not only irrigation officers but the civil authorities were also allowed to sit in the hall throughout, while the evidence of important witnesses on their side was going on. For instance, Mohite, Heble and other civil authorities were present during Prabhakar's evidence, Heble and others were present during Mohite's evidence and so on. S. B. Kulkarni was present when Darp was giving evidence and was in fact examined immediately after Darp. Though Darp stated in his evidence that Ex. 643 was the Commissioner's document, Kulkarni, who immediately thereafter was examined, stated that Ex. 643 was really drafted by Darp. Again Rajput, G. G. Joshi and the watchman were present when the evidence of Capt. Murty and Karle, despatch rider was going on. Kekre was present while the evidence of Chand was going on. He had also remained present earlier while the deposition of the Collector was going on. (He was involved in the incident of taking notes). Various witnesses were actually permitted to take notes while the depositions of some witnesses were going on. For example, while the deposition of the Collector was going on, both Mohite and Heble took notes whenever they were present. The Commission did not believe in the theory of any witness being taken unawares. The evidence of each of these witnesses lasted for more than one day and, in most cases, more than three or four days. Even if a witness is not allowed to sit in the hall during the examination of the other witness in whom he is interested, still, if the evidence goes on for more than a day, the copy of the deposition would go in his hands. There was, therefore, no point in observing the technicalities of all witnesses being driven out while another witness was being examined. There is, therefore, no substance in the contention that the fact that Bhalerao's evidence was postponed to a longer date or the fact that Desai, though attending the Commission's sittings, was examined last

on behalf of the irrigation officers, smacks of favouritism. No objection was taken at any time, nor was any point made about the above arrangement and it is very unfair on the part of the lawyers on behalf of the civil authorities to make a grievance for the first time in the course of their written arguments.

The strangest of the argument advanced on behalf of the civil authorities is that, according to them, the reference to the incident of Tungabhadra dam made by Khursale in his deposition, is indicative of the fact that the engineers were not worried about the situation. The reference to the sudden stoppage of the subsidence in the case of Tungabhadra dam has been made in the context of chance occurrences taking place through providential dispensation. Chance occurrences are chance occurrences and there is no regularity or repetition about them. That the same occurrences might repeat in the case of the Panshet dam was just a hope against despair and it is extraordinary that giving expression to such a hope is made the basis of an argument that the engineers were complacent about the Panshet situation.

## SECTION 8

MEETING BETWEEN DESAI AND KHURSALE WITH THE COLLECTOR AT 1 P.M.  
ON 11TH JULY 1961 AFTER THEIR RETURN FROM PANSHET

I will now turn to the most crucial meeting that took place between Desai and Khursale on one side and the Collector on the other at about 1-00 p.m. The engineers had promised to make a report to the Collector after their visit to the Panshet dam, to apprise him of the latest situation as observed by them. It is the case for Desai and Khursale that after paying a visit to the Panshet dam, the two went straight to the Collector's office with their clothes soiled and mud sticking to the gumboots in order to impress upon his mind the extreme gravity of the situation at Panshet and requesting him to secure military assistance for continuing the bag-stacking operations. There are divergent versions as to what the engineers told the Collector at this meeting. I will first of all set out the version of the two engineers and then refer to the Collector's version. Khursale, in his written statement (Ex. 473) at paragraph (7), states :

"I told the Collector that—

(a) the situation at Panshet was not only dangerous but grave.

(b) a portion of the dam is sinking, which is being raised by murum bags. For this purpose, the help of 400 army men to work in two shifts is requested as the local labourers are exhausted.

(c) we are trying to save the dam and God may help us to succeed. But, if we fail, the dam may get overtopped and breached.

(d) the Collector enquired as to what would happen if the Panshet dam breached. I told him that by sheer luck, if the breach is restricted to the outlet where the dam is now sinking and where there is a deep rocky cut, the flood would be of the order of 1958. But, if the breach spreads out which was more likely, it would be disastrous beyond imagination. The Collector also asked whether the Khadakwasla dam was strong enough. I told him that the dam is known to be weak, that there was a fear of its breach in 1958 itself and it would certainly breach if Panshet were to breach. We then proceeded to meet the Commissioner to fix up the army help."

Incidentally, I may point out that the sentence in the above passage "But, if the breach spreads out, which was more likely, it would be disastrous beyond imagination" supports the view put forward by me about the correct version of Khursale's deposition so far as the possibility of the extent of the breach is concerned. In answer to questions by Mr. Phadke, Khursale stated :

"We did tell the Collector that the breach in the dam was imminent, meaning that the breach was very likely, and the Collector conveyed the same to the Commissioner."

Khursale's answers to the questions put by Mr. Ghaswala are important and therefore deserve full citation :

"I have full recollections that I used the words "not only dangerous but grave." in relation to the situation at Panshet, in the course of my talk with the Collector in the afternoon of the 11th. These words are used in sub-paragraph (a), paragraph 7 of my written statement (Ex. 473). At sub-paragraphs (b) and (c), I have given the gist of what I told the Collector and they do not reproduce my words exactly. I am not in a position to give the words exactly. I did tell the Collector that overtopping may occur

any time. These words do not appear in paragraph (7) in which I have set out the substance of my talk with the Collector. The same meaning however is conveyed by the words used by me at sub-paragraph (c) of paragraph 7. 'But if we fail, the dam may get overtopped and breached.' We were trying to save the dam by taking a chance of stacking bags. I did convey to the Collector that if our efforts fail, the dam was certain to overtop and breach. The sentence in sub-paragraph (c) 'But, if we fail, the dam may get overtopped and breached' is correct. In those tense moments, we did not weigh any words that we used. We, however, conveyed the idea to him. We conveyed the idea by words similar to those used in paragraph (7) of my written statement. I feel that we adequately conveyed the idea to the Collector that the breach of the dam was a certainty in case our efforts fail and that the Collector properly understood what we said. I did also tell the Collector that if by chance sinking stopped, then only the dam would be saved."

It would be noticed that Khursale was subjected to severe cross-examination by the learned counsel for the civil authorities, and Khursale has come out unscathed in this wordy duel. Desai has fully supported Khursale on all the points both in his written statement and deposition. Desai, in his written statement (Ex. 773), has added one point and it is this :—

"Shri Khursale said that it (Khadakwasla dam) was already known to be weak and plans for strengthening the same were under consideration and it would breach if Panshet gives way."

In answer to questions by Mr. Phadke, Desai stated (Ex. 772) :

"Mr. Khursale, after giving him (Collector) a detailed description of the development at Panshet, told him that the dam was sinking and that it may be overtopped. He added that it was only miracle that would save the dam. The Collector asked Khursale about the Khadakwasla dam in case of the breach of the Panshet dam. Khursale told him that the dam was known to be a weak dam and that it would naturally breach when it receives the water from the Panshet dam. The Collector did not ask me about the rise of the water level in the city of Poona. He, however, asked me about the extent of floods in the City of Poona. We told him that the floods would be much more bigger than the floods of 1958."

Later on, in the course of the same cross-examination, Desai stated :

"Panshet dam is an earthen dam. There was no guarantee that the breach would remain confined to the conduit portion only, once the dam was overtopped. For the purpose of devising precautionary measures, it would have been wise to assume that the breach would be very wide ....."

Mr. Ghaswala, in the course of his cross-examination asked Desai to say whether he had omitted anything of importance from the account given by him in his written statement regarding the talk that took place between Khursale and himself on one side and the Collector on the other, and Desai stated that nothing of importance was omitted. Desai further stated that the Collector did not ask them as to what they meant by saying that it would be very disastrous.

It would thus be seen that both Desai and Khursale have emphasised that they did tell the Collector that the breach of the Panshet dam was not likely to be confined to a small portion but was likely to spread and that Khadakwasla



dam being a weak dam was likely to be breached in case the water from Panshet cascaded into the Khadakwasla reservoir. This is, in broad outline, the version of the two engineers about the talk that took place between them on one side and the Collector on the other.

I will now refer to the version of Prabhakar, Collector of Poona. In his written statement (Ex. 422) at paragraph (6), he stated :

"They (Desai and Khursale) informed me that the waste weir of Panshet dam had started to flow and that they had to go to the dam site by a ropeway which had been set up across the waste weir portion and then on foot through rain and slush."

At paragraph (7) of the written statement, he says :

"The engineers further informed me that there had been eight inches of rain on the 9th, 4½ inches on the 10th and 1½ inches on the 11th at Panshet dam and that strong breeze and heavy waves persisted."

At paragraph (8), he says :

"They (Desai and Khursale) also informed me that a portion of the dam near the outlet doors had been sinking and the water level at the subsiding portion was three feet below the top of the dam at that portion and at other places along the dam, it was six feet below the top of the dam. The engineers said that in order to raise the level of the subsiding portion, labour available at Panshet had been employed to fill in empty cement bags with sand, rubble, stones, etc., and to stack them on the subsiding portion. They further said that this work was going on continuously for almost twenty-four hours, the labour was getting physically exhausted and that more labour was not available at Panshet."

At paragraph (9), he says :

"They (Desai and Khursale) desired that as the labour that was working continuously for about twenty-four hours was exhausted, it was necessary that military assistance be immediately obtained to continue bag-stacking on the subsiding portion of the dam."

At paragraph (10), he says :

"In order to obtain military assistance I tried at once to contact Shri Mohite, Commissioner, Poona Division, at his office on the telephone but I was told that he was attending a meeting at the Agriculture College, Poona. I, therefore, tried to contact the Commissioner at the Agriculture College, but was informed that he had just left for his office. I immediately took Shri Desai and Shri Khursale in their jeep station wagon to the Commissioner's office."

It is necessary to make ourselves clear as to which of these two versions is correct, because it is common ground that it was Prabhakar, who gave a complete account to Mohite about the talks which he (Prabhakar) had with the two engineers and the engineers did not interrupt or add anything to what Prabhakar told Mohite. It is significant to note that reading Prabhakar's version, as set out in his written statement (Ex. 422), it is clear that there is no reference whatsoever, to the apprehension of the engineers about the safety of the dam. If the version set out in Prabhakar's written statement is true it means that the account given by the two engineers to Prabhakar was of a formal character and it only stressed the insignificant details except the fact

that the dam was sinking at the portion near the outlet doors and the water level at the subsiding portion was three feet below the top of the dam. Let us have a close look at these details, which, according to Prabhakar, were emphasised by the two engineers :—

- (1) The waste weir had started flowing.
- (2) The engineers had to cross the waste weir channel by a ropeway.
- (3) There had been heavy rains from the 9th July onwards and the rain on the 11th was 1½ inches and strong breeze and heavy waves persisted.
- (4) The portion near the outlet doors was sinking and the water level at the subsiding portion was three feet below the top of the dam.
- (5) Bag-stacking operations were continuously going on for twenty-four hours.
- (6) Labour was getting physically exhausted.
- (7) Army assistance was necessary.

It would thus be seen that, according to the Collector, the only important matter to which his attention was drawn that the dam was sinking at the portion near the outlet doors and the water level at the subsiding portion was three feet below the top of the dam. It is impossible for a layman to draw the conclusion from the above account that there was any danger to the dam much less that there was imminent danger to it. I will show, in the course of subsequent discussion, that the conclusion which the Divisional Commissioner, Mohite, drew was that, there was imminent danger of breach of the dam. I cannot understand why the engineers should repeat what they had stated to Prabhakar at their morning meeting. Even, according to Prabhakar, in their first visit to him on the morning of the 11th July, the fact that the spillway was flowing and the fact about the quantum of rains on the 9th and 10th July, were mentioned by the engineers to him. There was no point in repeating the same facts. Again, it is difficult to imagine that the engineers would fail to convey their appraisal about the dam, whether there was any danger, whether the danger was imminent or there was no danger at all. Assuming that the engineers did not themselves volunteer their opinion on this point, is it possible that the Collector would not ask them a further question as to what was their opinion about the future of the dam or whether according to them the dam was in danger? In this connection, it is necessary to remember the finding, which I have already recorded on the basis of the overwhelming evidence, that the Collector was already apprised of the substance of Bhalerao's message which stated that the dam was in danger and that heavy floods were expected. The Collector would never have remained satisfied with the dreary and drab account, which the engineers were supposed to have conveyed to him in the afternoon meeting, particularly when he knew that the engineers had paid a personal visit to the dam and inspected the situation for themselves.

Some comment has been made on behalf of the civil authorities in their written arguments that Prabhakar was not subjected to cross-examination either by Mr. Bakhale, Senior Advocate on Record or by the Commission on the above version given by him. It is, however, conceded that on this point Prabhakar's evidence was challenged both by Mr. Phadke, on behalf of the Citizens' Committee and Mr. H. R. Gokhale, on behalf of the Irrigation officers in his cross-examination. It is not as if Prabhakar's version in the written statement (Ex. 422) has gone unchallenged. It is immaterial as to who challenges the version in the cross-examination. Neither the Commission's

counsel nor the Commission is a party to the case and is not, therefore, bound to ask questions on each and every point. The whole written arguments on behalf of the civil authorities are strewn with such irrelevant and unnecessary comments upon the Commission's Senior Advocate on Record, and the Commission itself. It is, however, necessary to remember that the Commission did ask Prabhakar as to whether Desai or Khursale told him that the Panshet dam was in danger and Prabhakar repudiated that suggestion.

In answer to questions by Mr. Phadke, Prabhakar, in his cross-examination, stated (Ex. 421) :

“ M/s. Desai and Khursale did not appear to be uneasy about the situation at Panshet dam when they met me at 1 p.m. after their return from Panshet visit. They did say that the local labour had been working for full twenty-four hours and were getting exhausted. The labour was working in laying down the sand bags on the sinking portion. They did not inform me since when the sinking of the dam had begun nor did I inquire of them in regard to the same.”

Weighing the two rival versions in the scales of judicial appreciation and considering the probabilities of the case, I am inclined to the view that the version set up by the engineers is more natural and probable than the version set up by the Collector. The engineers had paid a special visit to the dam with a view to make on-the-spot inspection and acquaint themselves of the position prevailing there. They had already before them the message of Bhalerao which showed that the dam was in danger of breaching. They had further come to know from Panse that subsidence was taking place in a portion of thirty feet length of the dam, i.e. temporary waste weir section of the dam. It is in the background of this knowledge that they paid a visit to the dam. They saw for themselves the subsidence and the attempt at bag-stacking with a view to keep the level of the dam above the level of the water. In other words, they saw for themselves that a serious race was going on between the rate of sinking and the rate of stacking the bags. They had also noticed that a precarious free-board was being artificially maintained. This in itself was a serious situation. The cause of subsidence could not be ascertained. This must naturally have added to the anxiety of the engineers. In addition to the phenomenon of subsidence, there were two other disturbing phenomena. One was percolation of water which was estimated to be of the order of five to ten cusecs from the downstream end of the conduit. This could be attributed to piping. At that time, it was impossible to rule out piping. Even today, as would be clear from the discussion on the subject of the failure in the first part, Dr. K. L. Rao, an eminent engineer, has put forward a theory that this may be a case of piping though of a special type. Finally, the conduit was flowing intermittently full and when it did not touch the roof of the conduit, only a gap of six to nine inches was left. The water was going out in spurts filling the tail-end of the conduit. When the discharge was coming out of the conduit, it created a hissing noise. There is also some evidence to show that the noise resembled a thud or, at any rate, the noise similar to the bursting of a balloon. Is it reasonable to assume that the engineers, who had observed these highly disquieting features, would still remain complacent about the situation at the dam, even assuming that they had not succeeded in tracing the causes of anyone of these phenomena ? On the other hand, their failure to trace the causes of these phenomena would add to the burden of their anxiety and would make them extremely hopeless. It is precisely because the engineers were not in a position to diagnose the trouble and locate the seat of the disease that they depended upon providential intervention to come to their succour.

It is with the knowledge derived after their inspection of the dam and their inability to find out the real causes that they returned from the Panshet dam to apprise the Collector of the situation. About one thing, however, they were certain and that was, the necessity of continuing the bag-stacking operations uninterruptedly. Although they were convinced that by themselves these operations would not be crowned with success and that the efforts only aimed at building up a free board so that by some chance the subsidence or sinking would stop, they were unable to devise any means for stopping the subsidence as such and it was clear that unless the subsidence would come to an end, the remedy of heaping the murum bags by itself would be of no avail. It might help only if the subsidence came to an end in an accidental fashion. They knew that if the subsidence, which had gone on almost continuously for twenty-four hours, persisted, a time would come when the rate of bag-stacking and thus building up a freeboard would be outstripped by the rate of sinking and the dam would be overtopped. Since, however, they were convinced that bag-stacking must continue and since the local labour was completely exhausted, they felt the need of securing the army help and one of the objects, which impelled them to approach the Collector soon after their visit to the dam, was to impress upon him the need of securing army help. I feel no hesitation in rejecting the version put forward on behalf of the Collector, which attributes a drab, unimaginative and un-understanding narration of facts prevailing at the Panshet dam to the engineers. There was no reason why the engineers, should withhold certain facts from the Collector, nor was there any reason as to why they should emphasise only the need of securing army help. When the engineers suggested that army help should be secured, the Collector stated that they should approach the Divisional Commissioner, Mohite. That is how the two engineers and the Collector went to meet Mohite in his office at about 1-30 p.m. or so. What transpired at the Divisional Commissioner's meeting will also throw light upon the question as to what had transpired between the Collector and the two engineers, when the latter met him in the former's office at about 1-30 p.m. As pointed out above, it was the Collector who constituted himself the spokesman for the engineer's with the Divisional Commissioner and who, in the first instance, narrated the account as placed before him (Collector) by the two engineers.

## SECTION 9

MEETING BETWEEN THE COLLECTOR, PRABHAKAR AND TWO SUPERINTENDING ENGINEERS, DESAI AND KHURSALE ON ONE SIDE AND THE DIVISIONAL COMMISSIONER MOHITE ON THE OTHER AT ABOUT 1-30 P.M. ON THE 11TH JULY IN THE LATTER'S OFFICE

Although divergent accounts have been given as to what took place in this meeting, there is unanimity on the following points :—

(1) It was Prabhakar who conveyed a report to Mohite about the happenings at Panshet as depicted to him earlier by the two engineers and also the reason, which impelled Desai and Khursale to approach Prabhakar and as to why he (Prabhakar) had brought the two engineers to Mohite.

(2) A talk took place between Mohite and Brig. Bedi, Commander, Poona Sub Area, in which the former requested for army help and at the suggestion of Brig. Bedi wrote a letter, which is at Ex. 94, and

(3) A talk took place on trunk telephone first between Desai and Manerikar and then Prabhakar and Manerikar.

As stated above, there is considerable divergence about the account, which Prabhakar admittedly gave to the Divisional Commissioner on the basis of the report received by him from the two engineers. The version of the two engineers as given in their written statements (Exs. 773 and 473) is somewhat cryptic. In his written statement (Ex. 773) Desai stated :

“ The Collector informed the Commissioner that a certain portion of the Panshet dam was sinking and that the dam was in danger of a breach. All labourers on the work have been working for more than twenty-four hours and hence are exhausted and that the help of the army is needed to carry on the work. . . . . The Collector informed the Commissioner that he had already made arrangements to alert people and that he had 100 trucks ready for evacuation. The Commissioner told the Collector that many more can be collected from the Agriculture Department and the P. W. D.”

Mr. Ghaswala, in his cross-examination, asked Desai to recount the substance of the account given by the Collector to the Commissioner. This gave an opportunity to Desai to elaborate the details and he stated (Ex. 772) :

“ I am asked to recount the substance of the account given by the Collector to the Commissioner about the happening at Panshet as based on our conversation with him (Collector). I will attempt to recall as much as possible. It is like this :

“ There is a message that the Panshet dam is in danger and two engineers had been to me (Collector) in the morning. Thereafter, they visited the Panshet dam, came back and reported that the Panshet dam is sinking at a portion and the local people there were trying to raise the level of the embankment. The local labour is already exhausted as it has been working for nearly twenty-four hours without interruption. More local labour was not available. The bag-stacking operation has gone to be continued and it is, therefore, requested by the engineers that army help should be made available for carrying on the work of bag-stacking operation. Khursale has told me (Collector) that the Khadakwasla dam was also likely to breach in case the Panshet dam breached. I, therefore, request you to secure the help of the army officers by approaching Brig. Bedi.”

The version given by Khursale in his written statement (Ex. 473) is not as cryptic as that of Desai, nor is it exhaustive and full. Khursale, in his written statement at Paragraph (8), stated:

"When we met the Commissioner, the Collector told him that the Panshet dam was in danger as it was sinking and a breach in the dam was likely. Efforts were being made to save the dam from this imminent danger for which the engineers need army help. . . . . The Collector informed the Commissioner in our presence that he had alerted the people and that he had arranged about 100 trucks for evacuation, if and when necessary. The Commissioner added that a good number of trucks of the Agricultural Department as also of the P.W.D. would be available, if required. The Collector further told the Commissioner that he would meet him again at 4-00 p.m. to plan further arrangements in connection with the evacuation."

It is significant that Khursale was not cross-examined by Mr. Ghaswala in regard to the version put up by him in his written statement regarding the account given by the Collector to the Commissioner. The only point that was raised in cross-examination was regarding the arrangement of 100 trucks, which the Collector, according to Khursale, told the Commissioner as having been made by him. Khursale stated that he knew about it only from the Collector and he had not learnt about it from any one else.

It is significant that the account given by Prabhakar in his written statement (Ex. 422) is much more cryptic than even the account given by Desai in his written statement (Ex. 773). Prabhakar at paragraph (11) of his written statement (Ex. 422) says this:

"We met the Commissioner at his office at about 1-15 p.m. and I informed him of the situation at the Panshet dam as narrated to me by Shri Desai and Shri Khursale and requested him to make arrangements for military assistance for the work of raising the subsiding portion of the dam."

It will at once be seen that Prabhakar did not set out the account of his talk with the Commissioner. He only stated that he informed the Commissioner of the situation as narrated to him by Desai and Khursale. I will have to make detailed comments about the various admissions made by Prabhakar on this point as also on the point as to what account was given to him by the two engineers earlier. In the meantime, it is necessary to advert to what Mohite has to say on this point in his written statement (Ex. 517). At paragraph (2) of his written statement, Mohite purports to give an exhaustive account of what Prabhakar told him, and it is as follows:—

"At about 1-15 p.m. on 11th July 1961, I had returned to the Council Hall from a meeting in the Agriculture College, Poona. Immediately after I reached my office, Shri Prabhakar, Collector, Shri S. V. Desai, Superintending Engineer, D. I. C. II, and Shri Khursale, Superintending Engineer, D. I. C. I, came to my office. Shri Prabhakar informed that Sarvashri Desai and Khursale had gone to the Panshet dam that morning, that they had returned at about 1-00 p.m. from Panshet and that for some time he had been trying to contact me on the phone at the Agriculture College. But, on being informed that I had left the College, they had come to my office. Shri Prabhakar informed me that the engineers had told him that there had been eight inches of rain on the 9th, 4½ inches on the 10th and 1½ inches on the 11th at the Panshet dam and that a strong breeze persisted there which was causing heavy waves dashing against the dam. He further said that a portion of the dam near the outlet doors had been sinking and the water level at the sinking portion was three feet below the

top of the dam and at other places it was six feet below the top of the dam and that in order to raise the level of the sinking portion of the dam, labour available at Panshet had been employed to fill in empty cement bags with sand, rubble, stones, etc., and put the same on the sinking portion. He further informed me that this work of bag-stacking had been going on for almost 24 hours and the labour employed was getting physically exhausted. As more labour was not available at Panshet, the engineers considered it necessary that military assistance be obtained to continue the bag-stacking work."

Pausing here for a moment, it will be noticed that the version given by Mohite regarding Prabhakar's account is formalistic and full of insignificant details omitting all important and vital matters. The only important material supplied by Prabhakar to Mohite was that the dam was sinking at a portion near the outlet doors and that the water level at that portion was three feet below the top of the dam. Perhaps, another important material supplied by Prabhakar was to say that the work of bag-stacking had been going on for almost twenty-four hours. But, its significance would not be grasped by a layman, unless further questions are asked by Mohite and elucidation sought from the engineers. This part of the account shows that the process of sinking was almost continuously going on for twenty-four hours and had not abated and, notwithstanding the fact that the work of bag-stacking was going on for twenty-four hours, there was only a difference of three feet between the level of water and the top of the sinking portion. No elucidation was sought for by Mohite from any of the engineers about the significance and correlation of these two events, viz., the fact of subsidence and the fact that bag-stacking operations were going on for twenty-four hours and yet the level of water was just three feet below the top of the sinking portion. Unless some inquiry is made on this point or unless the engineers themselves pointblank told the Commissioner that the dam was in danger or unless Prabhakar told him so, it was difficult for anyone to draw the conclusion that the situation at Panshet was fraught with danger. It is significant that in this account, Prabhakar again does not mention the fact of having received Bhalerao's message saying that the Panshet dam was in danger and heavy floods were expected. In any case, it is clear that there is no indication in this account, which gave any hint to the Commissioner that the dam was in danger. I will refer to the answers given by Mohite in his cross-examination and will show how these answers stand in complete contradiction with the answers given by Prabhakar so far as the first point is concerned.

Before, however, referring to the positions taken up by these two highly placed officers, viz., the Divisional Commissioner and the Collector, in answer to questions in cross-examination, it would be useful to refer to an important contemporaneous document (Ex. 94). In order to understand the significance of this contemporaneous document, it is necessary to narrate a few more facts and refer to the other evidence including that of Brig. Bedi, Commander, Poona Sub Area. After Mohite heard the account given by Prabhakar, he was convinced of the need of requisitioning the help of the army for carrying on the work of bag-stacking. Mohite, therefore, telephoned to Brig. Bedi. At this stage, it is necessary to remember that the talk on the phone between Mohite and Bedi took place in the presence of Prabhakar, Khursale and Desai. In answer to questions by Mr. Phadke, on behalf of the Citizen's Committee, Brig. Bedi stated (Ex. 93) :

"I did apprehend danger to the dam. (This has reference to the personal reconnaissance of the dam made by him after the receipt of Mohite's message). I was already informed by Mohite about the imminence of the breach of the dam. My personal visit confirmed the apprehension

expressed in Mohite's letter (Ex. 94). I cannot say how grave the danger to the dam was, myself being a layman. The very fact that help of the army was requisitioned shows that the situation at the dam was desperate."

Earlier, in answer to questions by the Commission's counsel, Bedi stated:

"I was told that the breach of the dam was imminent."

This evidently has reference to what Mohite had told him on the phone. Prabhakar's attention was, therefore, drawn by the Commission to these two statements made by Bedi and he was asked to state whether he was prepared to say that these statements made by Bedi on oath are incorrect. Prabhakar replied that he was not prepared to say that these statements were incorrect, because he did not remember the exact words of the conversation. To a further question as to whether Mohite did not utter some such words to mean that the breach of the dam was imminent, Prabhakar again replied that he did not remember what words Mohite used, nor could he say whether Mohite used the words having the meaning suggested in the question. Mohite was cross-examined on this point by the Commission's counsel and his reply was somewhat vague. Mohite says (Ex. 516):

"I might have told Bedi on the phone that the breach of the Panshet dam was imminent."

That means that Mohite virtually accepted having told Bedi on the phone that the breach of the dam was imminent. At any rate, he was not prepared to deny that he did not tell Bedi that the breach was imminent. We have the positive word of Brig. Bedi that he was told by Mohite that the breach of the dam was imminent. In view of the evasive replies given by Mohite and Prabhakar, there is no reason why we should not accept Brig. Bedi's words as true.

In this background, let us now turn to the wording of the letter (Ex. 94). It runs thus:—

"Apropos to our telephone conversation a little while ago, I write this to request you to give an assistance of military personnel for stopping an imminent breach in the newly-constructed Panshet dam, 20 miles west of Poona beyond Khadakwasla dam. The nature of work is to fill up empty cement bags with stones and dump them in the portion of the dam which is sinking due to heavy rains in that area. Any force up to 400 Jawans would be required so that they can carry out the work continuously with shifts, if necessary.

Our engineers have been at the work continuously for the last 24 hours, and owing to shortage of labour, they need outside help immediately to prevent the breach. Shri S. V. Desai, Superintending Engineer, Deccan Irrigation Circle II, Poona, is the officer in charge of these operations on our side. His telephone numbers are:

Office : 3407.

Residence : 7332.

With kind regards,

Brig. A. S. Bedi,  
Commdr., Poona Sub Area,  
Poona.

Yours sincerely,  
(Signed) S. P. MOHITE.

Copy with compliments to Shri S. V. Desai, Superintending Engineer, D. I. C. (II), for information.

(Signed) 11-7.  
Commissioner,  
Poona Division."



The language employed in this letter fully supports Bedi's statement, viz., Mohite had told him that the breach of the Panshet dam was imminent. Analysis of the contents of Ex. 94 yield the following results:—

- (1) Reference is made to the telephonic conversation between Brig. Bedi and Mohite.
- (2) Breach of the Panshet dam was imminent.
- (3) Request was made to give assistance of the military for stopping that breach.
- (4) A force up to 400 Jawans would be required to carry on the work continuously in shifts.
- (5) Our engineers and labour who have been working continuously for the last twenty-four hours are exhausted.
- (6) They need outside help immediately to prevent the breach.
- (7) Shri S. V. Desai, S. E., D. I. C. (II), is the officer in charge of these operations on the civilian side.

The plain meaning of the words used in this letter leads to only one conclusion, viz., that Mohite was convinced on the basis of the account given to him by Prabhakar that the breach of the dam was imminent. A good deal of quibbling has been resorted to both by Mohite and Prabhakar in their cross-examination which is based on the words "stopping an imminent breach" used in the first paragraph and the words "to prevent the breach" used in the second paragraph of Ex. 94. It was urged by these two officers that the engineers told them that if military assistance was given, the breach, though imminent in the absence of such assistance, could be stopped or prevented. Such an interpretation does violence not only to the plain words used in the letter but also to the ordinary commonsense. Nobody could guarantee, much less the engineers, that military assistance would turn the corner and prevent the breach of the dam. Military assistance could not be regarded, at any rate, by the engineers as the waving of magic wand, so that the dam could be restored to its full health. All that the engineers could assure the Commissioner and the Collector was that with the help of the military personnel, the bag-stacking operations would be continued, which was the only possible way of staving off the disaster. I will presently discuss the replies given by these two distinguished officers in answer to questions in their cross-examination and will show how they had to have recourse to hair-splitting and prevarication in order to justify their preposterous interpretation. In the meantime, the interpretation sought to be placed upon this letter and also upon the talk that took place between Prabhakar, who acted as the spokesman of the engineers, and the Commissioner reminds me of the famous words used by Sir Winston Churchill in one of his orations during the Second World War while appealing the United States for help: "Give us the tools and we will finish the job". The engineers are credited with the confidence which these words echo, "Give us the army personnel and we will save the dam". That would be the plain rendering of the interpretation of the talk between the engineers on one side and the Collector and the Commissioner on the other, as put by Mohite and Prabhakar.

Let us now turn to the answers given by Prabhakar and Mohite in their cross-examination so far as the account given to Prabhakar by the two engineers is concerned and also the account of his talks with the two engineers given by him to Mohite, and how these two officers reacted to the information given by the engineers. At the very early stage of his cross-examination, Prabhakar took up a very uncompromising position. In answer to questions by Mr. Bakhale, Senior Advocate on Record, Prabhakar stated (Ex. 421) :

"I knew before the meeting that a portion of the dam was subsiding. I do not agree that the Panshet dam was in danger at that time."

In answer to questions by the Commission, Prabhakar stated :

"It is correct to say that I was not told by anyone nor did I realise on the 11th that the Panshet dam was in danger. Neither Mr. Desai nor Mr. Khursale told me on the 11th that the Panshet dam was in danger ..... Commissioner Mohite rang up Brig. Bedi and talked to him on phone. I was able to hear what Mohite told Brig. Bedi. After receiving Bedi's reply, Mohite dictated a letter in our presence and he gave a copy of that letter to Mr. Desai in my presence."

It is worthwhile to cite, in full, the questions and answers that were exchanged between the Commission and Prabhakar (Ex. 421) :

"Q. Is it not true that Mohite told Bedi that breach of the dam was imminent ?

A. I say that all that Mohite told Bedi was that the breach of the dam would be imminent, if the bag-stacking operations were not continued uninterruptedly. I am certain that Mohite did not tell him in a pointblank manner that the breach of the dam was imminent.

Q. Can you tell me how did Mohite gather the impression that the breach of the dam was imminent ?

A. He gathered that impression from what I told him. All that I told him was that a portion of the dam was sinking, that the local labour was exhausted and therefore the engineers were seeking military assistance. That was all that I told him.

Q. Did you gather the impression that the breach of the dam was imminent ?

A. No. Not ordinarily.

(Note.—The witness volunteers that if the bag-stacking work was not continued uninterruptedly and assistance was not given, then the dam might breach.)

Q. I suppose, you know the distinction between the breach of the dam being imminent and breach being a possibility ?

A. I know the distinction between the two. Neither Desai nor Khursale told me or the Divisional Commissioner that the breach of the dam was imminent."

Prabhakar's attention was then drawn to the wording of the letter (Ex. 94) and, in particular, to the first sentence and he was asked to state whether that sentence indicated that the words "imminent breach" were used by Mohite in his conversation with Brig. Bedi on phone. Prabhakar gave the following reply :—

"I do not think that they (the words) give any such indication. I still maintain that the words 'imminent breach in the newly-constructed Panshet dam' have no reference to the state of affairs as then existing."

Further questions and answers are again worth reproducing :—

"Q. What do you understand then by the words 'imminent breach in the newly-constructed Panshet dam' ?

A. I cannot give any other answer except the one that I have already given, that, if assistance was not given, the dam might breach.

Q. Does it not mean that you simply ignored the word 'imminent' or treated it as redundant ?

A. I did not treat it as redundant nor did I ignore it. I understood it to connote what I have stated already."

It would at once be clear from the replies given by Prabhakar that he found himself in a tight corner by reason of the words used by Mohite in Ex. 94 and was making a desperate endeavour to get out of it. While the intellectual

acrobatic, to which Prabhakar had taken recourse, may be admired, it is quite evident that Prabhakar's attempt in explaining away the words..... "imminent breach" is disingenuous and unconvincing. Prabhakar's exercise in intellectual gymnasium on this point does not stop here. He has shown dogged determination in sticking to his interpretation in answer to further questions put to him by Mr. Gokhale, on behalf of the Irrigation officers. The following questions and answers will illustrate the above comment :—

"Q. Does not this clause (first sentence in Ex. 94) indicate that if outside help was not given, the dam would breach ?

A. I say that if outside help was not immediately available, there was a possibility of the dam breaching.

Q. Would you agree with the suggestion that if outside help was not made immediately available, the breach of the dam would have become imminent ?

A. I say that the dam might breach if outside help was not available immediately. I felt that as soon as the requisite help was given, the danger to the dam would recede. If the work was continued uninterruptedly during the night, I assumed that the danger would disappear."

Again, at a later stage, Prabhakar stated :

"I did not feel that the situation was disturbing so long as the work of stacking the bags was continued."

It will be evident from the above that from the imminence of the breach, Prabhakar went to the likelihood of the breach and from likelihood of the breach he went over to the mere possibility of the breach and finally concluded by saying that he did not feel that the situation was disturbing so long as the work of stacking the bags was continued. This is splitting the hair with vengeance. When Prabhakar was continuously harping upon the distinction between imminence of breach, likelihood of breach and possibility of breach, while giving replies to Mr. Gokhale's questions, I made a humorous remark saying that Prabhakar hails from South India which is famous for dialecticians, such as Shankara, Madhwa and Ramanuja. I added, quoting an observation made by C. R. Das in one of his speeches which I attended as a school-going boy wherein Das said, with reference to the contention raised by C. Rajagopalachari for not deviating from the programme of non-co-operation chalked out by Mahatma Gandhi, that "The Cold South Indian logic is not going to solve any problem, because life is superior to logic." It is clear even to a man of ordinary intelligence that these remarks were not intended to deride Prabhakar in any way much less to ridicule the fact that Prabhakar hails from South India. For making criticism against the Commission, on behalf of the civil authorities, reliance has been placed on an extract from the issue of *Daily Sakal* of Poona, dated 11th April 1962. The report in *Sakal* is neither accurate nor full and evidently the reporter did not understand the meaning of the word "dialectician". The reporter has translated those words to mean that the South Indians are known for the tenacity of their views. I cannot understand why reliance was placed on the report of the *Sakal*, when, as a matter of fact, the observations were made by me in the presence of Mr. H. R. Gokhale and also Mr. Ghaswala. My object in using the word "dialectician" and C. R. Das's passage about South Indian logic was not to ridicule either Prabhakar or the land from which he hails, but was to relieve the boredom of the proceeding by making that remark which was not only not offensive but free from any malice. Humorous remarks are not unknown in a court of law and volumes have been written about humour in courts. Such humour has to be resorted to for relieving boredom, particularly arising out of

a prolonged hearing of a complicated case. Any one who feels that he has been slandered by being compared with the intellectual giants of the south, viz. Shankara, Madhwa and Ramanuja, is either ignorant of Indian traditions or is blinded by anger, passion or prejudice. Even Prabhakar did not take that remark as, in any way, offensive. It may be mentioned that Mr. Ghaswala was responsible for more than one humorous remarks. As regards the remarks made by me, viz., I remember to have read an advertisement in Marathi paper saying "there is one panacea for all ills". ( सर्व रोगांवर एकच रामबाण उपाय ) while referring to Prabhakar's attempt at repeating the same answer to all the questions, viz., that there was a possibility of breach if bag-stacking operations were not continued, it is evident that the same was also not intended to be taken seriously, although it contained a substratum of truth. Even Prabhakar did not take it seriously; as is clear from the reply given by him that the advertisement related to "Aspro". Ordinarily, I would have treated the comments offensive as they are made on behalf of the civil authorities, with the contempt that they deserve. But, since they are given great prominence and have been listed by way of illustrating the charge against the Commission that it (Commission) was harsh upon the civil authorities, I have made the above observations. Before concluding, I may point out that the cross-examination of the civil authorities assumed severity at my hand and also at the hands of the other advocates, because they were speaking, on material points, contrary to their own admissions in their own contemporaneous or near contemporaneous documents. This has already been illustrated by the replies given by Prabhakar with reference to the statements made by Mohite in the letter (Ex. 94) and this will be amply illustrated in the course of the discussion, which is to come hereafter. I am concluding this paragraph about Prabhakar by referring to one or two answers given by him to the questions put by Mr. Phadke :—

"I did not gather the impression from the talk I and the Commissioner had with Messrs. Desai and Khursale in the Commissioner's office that the night of the 11th was critical from the point of view of the safety of the dam. Generally, my impression was that if the help of 200 military engineers (Jawans) was given for the night, the situation would be safe, and since the help was given, we felt that everything would be all right."

The complacency indicated in the above reply is staggering and indeed pathetic. I will be referring hereafter to certain answers given by Mohite which, in effect, boil down to the following position :—

If the army help is given and the bag-stacking operations are continued for the night of the 11th, there would be no danger of the breach of the dam and if the night passed off without any untoward incident, then the danger would be averted.

That means that there was neither any danger to the dam during the night nor any danger would remain after the dawn of the next day and the danger would arise only if military assistance was not rendered. One can imagine what precautions could have been taken by the civil authorities, who held this view. We are told that, notwithstanding the conviction of the civil authorities to the above effect, they proceeded to take precautions on such a large scale that they would be sufficient not only in case of the breach of the Panshet dam but also of the breach of the Khadakwasla dam, which, on their own showing, was never in their contemplation. This aspect of the matter will be discussed fully at a later stage. In the meantime, I will refer to Mohite's evidence on the same point.

In answer to questions by the Commission's counsel, Mohite summarised the points that emerged from the account given to him by Prabhakar, as follows (Ex. 516) :

- (1) There were heavy rains on the 9th and 10th and some rains on the 11th.
- (2) Heavy wave wash, i.e. waves dashing against the upstream face of the dam as a result of strong breeze.
- (3) There was sinking near or opposite the tower.
- (4) Bag-stacking operation was going on for nearly 24 hours with a view to keep the level of the sinking portion of the dam above the level of water.
- (5) Local labour was exhausted and no more labour was available.
- (6) Hence the need of assistance from military engineers."

He admitted that he did not make any enquiries either from Prabhakar or from the engineers about the nature of sinking. He then proceeded to say :

"I did not get the impression that the process of sinking was continuing for 24 hours, nor did I get the impression that the sinking had started 24 hours back. I agree that sinking must have started 24 hours before and that bag-stacking operation must have been undertaken because of the sinking. I would also agree that sinking was going on during the period of 24 hours, but I cannot say whether it was continuously going on or whether it was spasmodic. I had asked Mr. Desai to give his personal critical appreciation of the position of the dam. In my opinion, this question included the question about the nature of the process of sinking and its effect upon the dam."

At a later stage, Mohite stated :

"I agree that the main ailment was that a portion of the dam had started sinking. I never knew that the sinking was continuous. I can, however, agree that the sinking was continuing. From the information given to me by Mr. Desai, my impression was that the danger to the dam at Panshet by sinking would be got over by continuous piling of bags filled with murum or sand on the sunken portion. I also got the impression that the engineers themselves would have tackled the situation, if the local labour had not been exhausted. According to me, their main need was to make the military help available to enable them to continue the bag-stacking uninterruptedly."

Questions were then asked about the impression, which Mohite gathered from the account given to him by Prabhakar and he (Mohite) plainly admitted that he gathered the impression that the breach of the Panshet dam was imminent. This answer completely destroys the structure, which has been sought to be laboriously built up by Prabhakar by quibbling over the words and by trying to equate imminence of breach to likelihood and possibility of breach. Mohite was closely questioned by the Commission with reference to the wording of Ex. 94, viz., sinking was due to heavy rains in that area, and Mohite stated that he did not remember whether Prabhakar used those words. He added that he gathered the impression that sinking was due to heavy rains from the account given by Prabhakar about the rainfall on the 9th, 10th and 11th and persistence of strong wind and high waves. He was then asked to state as to why he did not discuss the question and ask for elucidation from the engineers as to whether sinking could be attributed to heavy rains, and Mohite's reply was typical of the attitude he was adopting. Mohite says :

"I did not think it necessary to enquire from the engineers as to whether sinking could be due to heavy rains. My job was purely to get assistance from the military engineers. Prabhakar could also have secured the military

assistance. When the engineers came to me for military assistance along with Prabhakar, I felt that my main concern was to secure military assistance."

Then he was asked to say whether he tried to understand the nature of sinking and its possible effects upon the dam to which he replied that, he did try to understand it by asking a question to Desai about his (Desai's) critical appreciation of the situation at the Panshet dam. It was pointed out to Mohite that the question asked by him related to the extent of floods and not to the nature of the sinking process and its possible effects. Mohite replied that he asked Desai a general question which, in his view, covered all things about the situation at the dam. It would be seen from the admissions which Mohite had to make under the impact of cross-examination that he did gather the impression that the breach of the Panshet dam was imminent from the account given to him by Prabhakar. At the same time, it is clear that Mohite did not try to apply his mind with a view to understanding the real nature of the ailment of the Panshet dam. He has tried to dodge the issue by saying that his main concern was to secure military assistance and that he was not concerned with the real appreciation of the situation of the Panshet dam. At this stage, it may be pointed out that neither Prabhakar nor Mohite thought it fit to pay a visit to the Panshet dam at any time on the 11th July 1961. It is necessary to remember, in this context, that Brig. Bedi, whose responsibility was to supply army personnel, thought it necessary to pay a personal visit to the Panshet dam and to see things for himself. Brig. Bedi has given two reasons: as to why he thought of going to the Panshet dam. One was that he wanted to know the locality in which his men were to operate and the second was that he wanted to see the situation at Panshet dam for himself. It may be mentioned that during the floods of 1958, Chaturvedi, the then D.S.P., paid a visit to Khadakwasla dam to see the situation for himself. It is noteworthy that the Police Sub-Inspector, Haveli and Sir Panch, Nanded, thought it fit to pay visit to Panshet dam, on the morning of the 11th, after hearing from Home Inspector Joshi that the dam was in danger. It is interesting to see the effect that was produced on Bedi's mind by reason of his personal reconnaissance of the dam. He says that the information received from Mohite, viz., that the breach was imminent, was confirmed as a result of his on-the-spot inspection. He also came to the conclusion that the situation was grave. He says (Ex. 93) :

"I tried to impress upon the mind of Col. Braganza, when he came to the dam site in the evening of the 11th, that a grave situation would develop in case the Panshet dam breached. My attention is invited to the sentence in my written statement to the following effect (Ex. 93-A) :—

"I also impressed upon him the possible gravity of the situation and ordered him not to spare any efforts in ensuring the reinforcement required."

The words 'gravity of the situation' have reference to the possible breach of the dam. . . . . I did apprehend danger to the dam. I was already informed by Mohite about the imminence of the breach of the dam. My personal visit confirmed the apprehension expressed in Mr. Mohite's letter (Ex. 94). I cannot say how grave the danger to the dam was, myself being a layman. The very fact that the help of the army was requisitioned shows that the situation at the dam was desperate."

After referring to the information given to him by Mone, the then Collector of Poona, that the Khadakwasla dam might give in as a result of heavy floods in the month of July 1958, Bedi stated :

"At that time (1958), there was no Panshet dam, and it was clear to me that the gravity of the danger, in case of the failure of the Panshet dam, to the safety of the Khadakwasla dam was greater now."

I am sure that if Mohite or Prabhakar or both had cared to pay a visit to the dam site, they would also have been impressed by the gravity of the situation prevailing there. Questions were asked to both Prabhakar and Mohite as to why either or both of them did not think it worthwhile to pay a visit to the Panshet dam on the 11th July, Prabhakar stated (Ex. 421) :

"I did not visit the Panshet dam on the 11th, after receiving the news that a portion of the dam was sinking, because I am not a technical man and I felt that my presence was more necessary at Poona."

The excuse that Prabhakar was not a technical man does not stand to reason, because Brig. Bedi himself was not a technical man and he has stated that he is a layman. The second reason given by Prabhakar, viz., that his presence was more necessary at Poona, also does not stand, because, admittedly, Prabhakar did not move his little finger during the period between the first visit of the engineers at his residence and the meeting in the Divisional Commissioner's office in the evening.

Let us now see what Mohite has to say on this point. In answer to questions by Mr. Phadke, Mohite stated (Ex. 516) :

"I came to know within a week after the disaster that Brig. Bedi had paid a visit to the dam on the evening of the 11th. I did not think it necessary to visit the dam on the 11th. I did not ask the Collector to visit the dam and see the situation for himself. I do not remember if any suggestion was mooted, after my talk with Prabhakar and the engineers, that some responsible civil officers should pay a visit to the dam and see the situation for himself."

Now, if Brig. Bedi, who was not concerned in devising any precautionary measures, thought it necessary to pay a visit to the dam, I cannot understand why Mohite should think it unnecessary to visit the dam. As pointed out above, those who paid visit to the dam had learnt a good deal about the situation prevailing there. Col. Braganza, in his written statement (Ex. 294), has supported Brig. Bedi by saying :

"He (Brig. Bedi) again stressed the gravity of the situation on me and I promised to give him a report after my personal reconnaissance on the same night."

In the same way, in his evidence (Ex. 293) in answer to questions by the Commission's counsel, Braganza says :

"(But) Brig. Bedi had expressed his opinion, viz., that the situation was grave. I myself thought that the situation was grave."

One Manohar Dattatraya Puli, Photographer of the Purnima Photo Studio, Deccan Gymkhana, had visited the dam along with Gokhale, reporter of the Indian Express, and his statement has been brought on record. It is at Ex. 1018. Puli has stated that he told his friends, Thakur and Enalikar of Daily Sakal, who asked him about the conditions seen by Puli on the spot :

"I told them that the dam would not survive and that there was danger."

There is another indication about the impression, which Mohite must have formed on hearing Prabhakar's account in regard to the situation at Panshet. After receiving the telephonic message from Mohite, Brig. Bedi telephoned to Col. Braganza, Commandant of the Bombay Engineer Group. Braganza, in his written statement (Ex. 294), says :

"Brig. Bedi impressed me with the urgency and the gravity of the work."

At paragraph (5), while referring to the talk, which he had with Bedi, after the latter had made personal reconnaissance, Braganza says :

“ He (Bedi) *again stressed the gravity of the situation* on me and I promised to give him a report after my personal reconnaissance the same night.”

This clearly shows that Brig. Bedi referred to the gravity of the situation of the Panshet dam in his telephonic talk with Braganza and this impression was formed by Bedi on hearing Mohite's talk on the phone.

I will now turn to Mohite's appreciation of the situation at Panshet and his explanation about the use of the words “ imminent breach ” in Ex. 94. In answer to questions by the Commission's counsel, Mohite stated (Ex. 516) :

“ From my talk with Prabhakar which I had in the presence of Desai and Khursale, I gathered the impression that the breach of the Panshet dam was imminent. Still, I maintain that the situation at Panshet was not serious. By ‘ imminent ’, I mean threatening or impending. The breach was impending. I might have told Bedi on the phone that the breach of the Panshet dam was imminent.”

A little later, the Commission asked the following question to Mohite :—

“ Q. Do you not think that, as a highly placed officer, it was your duty to have a correct appraisal of the situation at Panshet, so that you could devise proper ways and means to stop the danger ? ”

Mohite's answer was :

“ A. The material given to me by Prabhakar was sufficient to approach the military for assistance.”

In answer to further questions, he stated that, to secure the military assistance was his main concern. He admitted that Prabhakar could also have secured military assistance. In answer to questions by Mr. Phadke, Mohite stated :

“ I gathered from the information given to me by the Collector, who had come to my office at about 1-15 p.m. along with the two engineers, that there was sinking in a portion of the dam and that the danger to the dam had arisen because of sinking and other factors, such as heavy rain, breeze, etc. I gathered the impression from my talk with the engineers that they hoped to save the dam if military assistance was made available to them. ....

I say that the possibility of the breach of the Panshet dam was remote in view of the fact that the military assistance was made available and the opinion expressed by Mr. Desai.

Mr. Desai said that he hoped to maintain the level of the dam above the level of the water with the assistance of the military engineers made available, because that would enable them to continue the work of stacking bags uninterruptedly. We took the hope expressed by Mr. Desai at its face value, but proceeded to take precautionary measures on the assumption that the dam might breach.

By imminent breach, I do not mean that the breach might occur at any time. I do not accept the interpretation of the word ‘ imminent ’ suggested to me, viz., that the breach is near hand.”

At little later, he stated :

“ The words ‘ imminent breach ’ which I have used in the letter at Ex. 94 indicate my understanding of the situation at Panshet as gathered from the account given to me by the Collector. I did not gather that the building up of height of the sinking portion of the embankment was a race against time.”



Mohite was told that sinking was going on and the work of bag-stacking was going on for twenty-four hours. He was also told that as a result of these bag-stacking operations, an artificial free-board was maintained and that the level of water was only three feet below the level of the artificially raised embankment. In view of this information, it was clearly the duty of Mohite, the most experienced administrative officer in Poona, to try to understand the significance of these developments. He could not take a wooden view of the matter. He ought to have applied his mind to the question and if he had done so, he would certainly have understood that the situation was grave and that there was no guarantee that the dam would be saved merely by continuing the bag-stacking operations. Although Mohite says that he did not think that the situation was grave, he did tell Bedi that the breach of the dam was imminent and Bedi gathered the impression that the situation was grave. Mohite also used the expression 'imminent breach' in his letter (Ex. 94) written to Bedi on 11th July 1961. Mohite, therefore, has made a frantic attempt to get out of the difficulty created for him by the expression 'imminent breach'. At one stage, Mohite admitted that by 'imminent', he meant threatening or impending. He also admitted that the breach was impending. He further admitted that he might have told Bedi on the phone that the breach of the Panshet dam was imminent. He, however, tried to wriggle out of this position by saying that he did not mean by 'imminent breach' that the breach might occur at any time, nor was he prepared to accept the interpretation of the word 'imminent' suggested to him, viz., that the breach was near at hand. Having accepted that the word 'imminent' meant threatening or impending, Mohite should have admitted unhesitatingly the suggestion made to him, viz., that the breach was near at hand. Referring to the Concise Oxford Dictionary, we find the following meaning given to the word 'imminent' viz., impending, soon to happen. The words used by Mohite clearly indicate that the breach was impending or was an event soon to happen. No amount of verbal jugglery could extricate Mohite from the position that, according to the estimate formed by him at that time, the breach was impending and would occur at any moment. Nor is there any substance in Mohite's contention that rendering of military assistance would turn the corner. Military assistance was just for continuation of the work that was being done by the local labour for twenty-four hours. The number that was engaged at Panshet before securing the military assistance was also about two hundred. If two hundred labourers, after having worked for a very long time, had not succeeded in stopping the subsidence, there was no guarantee that the military engineers would succeed in doing so. Of course, the disaster might be averted for some time and actually it was postponed by about twelve hours on account of the efforts made by the military personnel.

I will now briefly refer to the trunk call to Manerikar by Desai and the talk that took place between Manerikar and Desai in the first instance and Manerikar and Prabhakar in the second. This incident has not much significance, because it has in no way influenced the subsequent course of events. At the same time, considerable emphasis is being laid upon this incident, on behalf of the civil authorities, with a view to show that Desai never felt that the situation was serious as would be clear from what he conveyed to Manerikar. Therefore, it is necessary to discuss the same in brief. Prabhakar, in his written statement (Ex. 422) has stated :

"Shri Desai spoke to Shri Manerikar on the phone and apprised him of the position at Panshet dam and the arrangements made to send military assistance there. After Shri Desai spoke to Shri Manerikar, I spoke to Shri Manerikar and requested him to have the General Officer Commanding, Maharashtra and Gujarat area, Bombay, personally approached through

the Secretary to the Government, Home Department, Bombay, so that the military assistance already obtained locally from the Sub-Area Commander could be formalised. After I had finished my talk with Shri Manerikar, Shri Desai again talked to Shri Manerikar, who told him that he would be arriving in Poona that evening by the Deccan Queen."

It is noteworthy that Prabhakar does not refer to the substance nor the details of the talk between Desai and Manerikar. He merely says that Desai apprised Manerikar of the position at Panshet dam. Mohite, in his written statement (Ex. 517), at paragraph (5) has also used similar language. When Mohite was asked a question by the Commission to say as to whether Manerikar's impending visit did not indicate that the situation at Panshet was grave, Mohite repelled that suggestion. Desai, in his written statement (Ex. 773) stated :

"The Additional Chief Engineer was contacted by me on trunk from the Commissioner's office only and informed of the situation at Panshet and the steps taken by us to meet the same."

It will thus be seen that the statements of all these three officers are in identical terms. The statement, which is of a general character, obviously implies that all the necessary information relating to the situation at Panshet was conveyed by Desai to Manerikar. In answer to questions by Mr. Phadke, Desai stated (Ex. 772) :

"I told Manerikar (on phone) all that I had personally seen at the dam site and apprised him of the developments. I also gave him a gist of the talk that we had with the Collector and the Commissioner. I did tell Manerikar that the earthen top of the embankment was already under water and the free-board of four feet was built up by the sand bags."

Nothing could have more vividly brought home to Manerikar, and to Prabhakar and Mohite, who were also listening to the talk, the gravity of the situation at Panshet. Manerikar fully supports Desai's version on the point. At paragraph (12) of his written statement (Ex. 664), Manerikar says :

"At about 14.00 hrs. on the 11th July 1961, Shri Desai, S.E., D.I.C.(II), phoned to me at Bombay saying that the top of the dam above the conduit portion had sunk leaving a free-board of a foot or two and that the work of restoration by means of murum-filled bags was being done by all the available men at the site. He also mentioned of some percolation of water from above the extrados of the conduit arch, over which a rock-toe had been provided. .... he had contacted the Collector of Poona and the Commissioner, Poona Division, and acquainted them with the abnormal situation and requested that the help of the army (sappers) should be arranged for at once to continue the job vigorously."

It is significant that Desai specifically told Manerikar, in the presence of Mohite and Prabhakar, that he had acquainted them (Prabhakar and Mohite) with the abnormal situation. There is no contradiction to this part of Manerikar's statement either by Mohite or by Prabhakar. In answer to questions by the Commission's counsel, Manerikar stated (Ex. 663) :

"Desai had told me that the difference in the level of water and the top of the dam was about a foot or two and that empty cement bags were being stacked to make the deficiency good. At that time, it did strike me that the situation at Panshet was alarming. I had also a talk with Prabhakar on the phone. This took place immediately after Desai's talk with me. I did not convey to him my appreciation of the situation, nor did I tell him

that, according to me, from the report received, the situation at Panshet was alarming. Prabhakar also did not tell me that the situation was dangerous."

When questioned as to whether he did not consider to be his duty, as a Senior Engineer, to convey to Prabhakar his appreciation of the situation and tell him clearly that the situation at Panshet was dangerous or alarming, Manerikar's reply was :

"I did not think it necessary to convey my own impressions, because I knew that the two S. Es. had met him personally and I presumed that they had conveyed all that was necessary to be conveyed to the Collector."

Manerikar explained that the phenomenon of percolation appeared to him to be alarming, because he connected it with what is technically known as, piping. It was not necessary for Manerikar to reply upon the presumption, because Desai himself told him (Manerikar) to the face of the two civil authorities, that he acquainted them with the abnormal character of the situation.

Manerikar wrote a letter to the Home Secretary for finalising the army help in pursuance of Prabhakar's suggestion to him, and that letter is at Ex. 721 and is dated 11th July 1961. It runs thus :

"This is to confirm my request made to you on telephone this afternoon to request the Bombay Area to lend the necessary assistance on requisition from the Poona Sub-area in the matter of emergency work at Panshet dam which is in danger due to settlement. I understand from the Superintending Engineer, Deccan Irrigation Circle No. II, and the Collector of Poona, that the assistance of the Poona Sub-area has already been requested."

This contemporaneous document fully supports the contention put forward on behalf of the Irrigation Officers, viz., that the engineers had acquainted Prabhakar and Mohite about the seriousness and gravity of the situation and the fact that the dam was in imminent danger of breach. In the face of this overwhelming evidence, it is idle to harp upon small points, viz., that percolation was not reported to Manerikar earlier and that on hearing about subsidence, Manerikar did not feel that the situation was alarming, because subsidence might be due to differential settlement. I have discussed these questions at some length in the earlier paragraphs and it is not necessary to repeat that has been stated earlier. Suffice it to say that Desai's talk on the trunk telephone with Manerikar in the presence of Mohite and Prabhakar and the letter (Ex. 721) written by Manerikar to the Home Secretary corroborate the story put forward by Desai and Khursale about the talk they had with the Collector in the first instance and the talk between the Collector and the Commissioner at a later stage.

I will now deal with a point, which has been raised by Mohite and supported by Prabhakar, viz., that after the trunk to Manerikar was booked and before it materialised, Mohite asked Desai to give his personal critical appreciation of the position at Panshet dam, as, according to Mohite, this was necessary to assess the situation and make necessary arrangements to meet any emergency, should it arise. Let me quote Mohite himself on this point. At paragraph (4) of his written statement (Ex. 517), Mohite has stated :

"Shri Desai replied that they had been already working at the Panshet dam to raise the level of the sinking portion of the dam and that they hoped to save the dam with the help of the 200 military personnel, being sent there, because it would enable them to continue the work of raising the level uninterruptedly. Shri Desai further stated that if they were able to keep the level of the sinking portion above

the water level throughout the night of the 11th, which they hoped to do, the dam would be saved. I explained to Shri Desai that even if they hoped to save the dam, it would be necessary to make arrangements to meet any emergency that might arise and, therefore, I asked Shri Desai what would happen if Panshet dam breached. Shri Desai replied that if Panshet dam breached, there would be heavy floods. I further inquired of Shri Desai as to what he meant by 'heavy floods' and Shri Desai replied that it was difficult to say, but the floods would be greater than the 1958 floods. I then asked him to what extent the floods would be heavier than the 1958 floods, but Shri Desai expressed his inability to indicate, more specifically, the extent of the likely floods. I asked Shri Desai how much time it would take for the floods to reach Poona from Panshet in the event of a breach taking place and Shri Desai replied that it would take about two to two-and-half hours. I then asked Shri Desai as to what would happen to Khadakwasla dam if the Panshet dam breached. Shri Khursale explained that when an earthen dam was overtopped there was likelihood of it being breached, but a masonry dam, like Khadakwasla dam, even if overtopped, would not normally be breached."

The following points emerge on an analysis of the case put forward by Mohite at paragraph (4) of his written statement (Ex. 517) :

(1) The Panshet dam would be saved if the help of 200 military personnel was supplied at Panshet, because with their help, they (engineers) hoped to keep the level of the sinking portion above the water level throughout the night of the 11th July.

(2) It was Mohite, who raised the question as to what might happen, if the Panshet dam breached, because he felt that it would be necessary to make arrangements to meet any emergency that might arise.

(3) Desai, in the first place, replied that if the Panshet dam breached, there would be heavy floods.

(4) Mohite asked Desai what he meant by heavy floods.

(5) Desai replied that it was difficult to answer the question, but, the floods would be greater than the floods of 1958.

(6) Mohite then asked him to what extent the floods would be heavier than the floods of 1958.

(7) Desai expressed his inability to indicate more specifically the extent of the likely floods.

(8) In answer to a further questions put by Mohite, Desai replied that the floods would take about two to two-and-half hours to reach Poona from Panshet.

(9) On Mohite's asking Desai as to what would happen to the Khadakwasla dam in case the Panshet dam breached, Khursale explained that when an earthen dam was overtopped, there was likelihood of its breaching, but the Khadakwasla dam, which was a masonry dam, would not normally breach even if it was overtopped.

It would thus be seen that Mohite wanted to devise precautionary measures although he was assured that the dam was safe and that in any case Desai was hopeful of keeping the level of sinking portion above the water level through the night of the 11th July with the assistance of two hundred military jawans and if he succeeded in doing that, the dam was safe. If this version is true, then there was no forewarning at all. Where was then the need of proceeding to forearm? Why should Mohite think of devising measures to meet an emergency, which was not only remote but was most unlikely to happen, particularly because he knew that the army assistance was secured and two hundred jawans were to proceed to Panshet? In these circumstances, it is difficult to understand why Mohite proceeded on the footing that the Panshet dam would breach.

Did he not know that by devising measures on the basis of a wrong assumption, he would only succeed in creating panic which, as administrators are always fond of saying, should be avoided? The matter does not rest there. When Mohite asked a question to Desai about the consequences of the breach of the Panshet dam, Desai merely gave a reply that there would be heavy floods, and it was only after a second question was put by Mohite that Desai came out with the reply that the floods would be greater than the floods of 1958. To a further question by Mohite as to how much greater, Desai expressed his inability to indicate the extent of the likely floods. The questions, which Mohite says he asked to Desai, clearly indicate that Mohite knew about the extent of the floods of 1958. Without knowing the extent of 1958 floods, he would never have raised the question, how much greater the floods of 1961 would be than the floods of 1958. Further, Mohite's anxiety to know about the fate of the Khadakwasla dam, in case of the breach of the Panshet dam, is equally significant. This question clearly indicates that Mohite was aware that Khadakwasla dam was a weak dam. Otherwise, there is no reason as to why he should have asked that question. Unless a layman has some background about the condition of the Khadakwasla dam, which was a solid masonry dam (from the point of view of a layman), he would not raise the question about the future of that dam. The mere fact that large quantity of water would be released, as a result of the breach of an earthen dam, would not endanger the safety of a masonry dam, so far as a layman is concerned.

I will try to apply the normal judicial taste for appreciating the correctness of this version presently. In the meantime, I may observe that it is noteworthy that the question about the possible consequences of the breach of the Panshet dam was raised by Mohite, the highest administrative officer in Poona. That shows that the administrative officer is conscious of his own responsibilities in trying to make some assessment of the floods so as to enable him to devise appropriate measures. If Prabhakar tried to do it in the morning of the 11th, when he was told by the engineers that the Panshet dam was in danger, that must be viewed as a very proper and necessary step to be taken by the administrative head of the district.

Desai and Khursale do not refer to any such talk having been raised by the Divisional Commissioner in the course of their afternoon meeting with him. That means that, according to them, no such talk took place. According to Desai and Khursale, some talk took place between them on one side and the Collector on the other about the extent of the floods, etc., when they met him at his office prior to their going to the Divisional Commissioner's office. This is what Khursale says at paragraph 7(d) of his written statement (Ex. 473) :

"The Collector enquired as to what would happen if the Panshet dam breached. I told him that by sheer luck, if the breach is restricted to the outlet where the dam is now sinking and where there is a deep rocky cut, the flood would be of the order of 1958. But, if the breach spreads out, which was more likely, it would be disastrous beyond imagination. The Collector also asked whether the Khadakwasla dam was strong enough. I told him that the Khadakwasla dam is known to be weak, that there was a fear of its breach in 1958 itself and it would certainly breach, if Panshet were to breach. We then proceeded to meet the Commissioner to fix up the army help."

In answer to questions by the Commission's counsel, Khursale stated that he had told the Collector that if the breach was restricted, the floods would be of the order of 1958, but if the breach spread wider, then the floods would be much bigger than the floods of 1958. No question appears to have been asked to Khursale challenging the truth of this part of his evidence.

Desai, in his written statement (Ex. 773) stated :

“.....otherwise the dam may get overtopped and breach. The Collector thereupon asked as to what would happen if the dam breached. Khursale replied that if the breach confines to the outlet portion where it is sinking, the floods may be of 1958 order. But, if the breach spreads to longer lengths, which is more likely, it would be very disastrous.

The Collector asked whether the old Khadakwasla dam was safe.

Shri Khursale said that it was already known to be weak and plans for strengthening the same were under consideration and it would breach if Panshet gives way.”

The only answer that was elicited in his cross-examination by Mr. Phadke on this point was whether the Collector asked Desai about the rise of water level in the city of Poona on the breach of the Panshet dam and Desai said that he (Collector) did not ask him about the water level but he only asked him (Desai) about the extents of floods in the city of Poona and the Collector was told that the floods would be much bigger than the floods of 1958. The cross-examination of Desai by Mr. Ghaswala was confined to asking the witness whether he has omitted anything of importance in his written statement and the witness stated that he has not done so. No questions were asked to Khursale by Mr. Ghaswala putting forward Mohite's version to him and asking him whether any such talk took place, nor was that version put to Desai. It was left to Mr. Phadke to elicit the following from Desai (Ex. 772) :—

“ The Divisional Commissioner also did not ask me about the extent of floods in 1958.....I presumed that the Collector and the Divisional Commissioner must have information regarding the extent of 1958 floods.....I knew that the flood water had reached one furlong on either side of the river during the floods of 1958. We, therefore, felt that it would be proper to assume that the flood water would reach a limit of half a mile on either side of the river as a result of the breach of the two dams. We considered it to be a safe assumption to rely on. On above the assumption, Lakdi Bridge (Sambhaji Bridge) should be under water. The New Bridge (Nava Pool) should also be under water although I do not know the exact height of the New Bridge near Shanwarwada. The same thing applies to Sangam Bridge. The level of Sangam Bridge is lower than of the Lloyd's Bridge.”

We have thus two rival theories on this point as well. According to Khursale and Desai, the talk about the consequences of the breach of the Panshet dam took place in the Collector's office where as according to the Collector and the Commissioner, that question was mooted in the Commissioner's office at the instance of the Commissioner himself. There are certain very baffling features about the version put forward on behalf of Mohite. I have already commented upon some of them and pointed out that there was no need, whatsoever, for Mohite to proceed to consider precautionary measures when the engineers had told him that the dam would be safe in any case. I will now proceed to consider the remaining features. As pointed out above, Mohite's questions and answers implied that he knew about the 1958 floods and that is why he raised the question as to how much bigger the floods of 1961 would be than the 1958 floods. Surprisingly enough, Mohite has come forward with the theory that he had no idea about the floods of 1958. To a question asked by the Commissioner's counsel as to whether he had any idea about the floods of 1958, Mohite replied (Ex. 516) :

“ I did not. I was in Poona in 1958. At that time, I was holding the post of the Director of Agriculture.....I had no idea of the nature and extent of the floods of 1958. In order to understand what Desai had to

convey to me by saying that the floods would be greater than the floods of 1958, it was necessary first of all to understand the nature and extent of the floods of 1958. I did not ask Prabhakar whether he himself knew about the nature and extent of the floods of 1958. I did not ask Prabhakar to take out the file relating to the floods of 1958, so that he would post himself correctly about the position of the floods and also explain to me the same. My idea was to find out later on the nature and extent of the floods of 1958."

A little later, he stated :

"I did not ask Desai about the nature and extent of the floods of 1958, nor Mr. Khursale. I did not know the level that the floods water of 1958 had reached nor the localities except that riverside localities were affected."

In order to understand the subsequent evidence on this point, it would be worth while to quote the questions and answers exchanged between the Commission's counsel and Mohite (Ex. 516) :

Q. Since you were the authority to take measures, did you not think it necessary to have a correct idea about the nature and extent of the floods of 1958 ?

A. I was going to get the clarification at a later stage.

Q. When you asked a question to Desai how much bigger would be the floods coming out in case of breach of the Panshet dam than the floods of 1958, does not this imply that you were aware of the nature and extent of the floods of 1958 ?

A. It does not imply that. On the other hand, I expected Desai to explain the nature and extent of floods of 1958 in case he knew about it in answer to the question put to him how much bigger would be the floods. I did not tell Desai that I was unaware of the nature and extent of the floods of 1958. I expected Desai or Khursale to explain to me everything of the floods of 1958 as a reply to my further question, viz., 'how much bigger' ?

Q. When your expectation that Desai would explain the nature and extent of the floods of 1958 was not fulfilled and Desai did not explain anything about the same, was it not your duty yourself to ask him to offer an elucidation about the extent and nature of the floods of 1958 ?

A. Since Desai did not himself offer any explanation about the floods of 1958, I felt that Desai himself might not know about it."

In answer to a further question, Mohite stated :

"My idea was to gather information about the floods of 1958 from other sources, and, therefore, it cannot be said that our conversation with Desai and Khursale was futile. The talk gave me the important idea that the floods would be bigger than the floods of 1958. Mr. Desai expressed his inability to explain to what extent the floods of 1961 would be bigger than the floods of 1958. I did not ask Khursale anything about it."

To another question, viz.,

"Does it not mean that you were going to adopt measures on the basis of two unknown factors, viz., the extent of the floods of 1958 and the possible floods of 1961 ?"

Mohite replied :

"The extent of the floods of 1958 could be determined and I say that the extent and nature of the floods of 1958 was explained to use by Darp."

So far as the evidence relating to the assessment of the extent of the floods is concerned, I reserve my comment to a later stage of this report. At present, the point that I am making is that, the stand taken by Mohite is riddled with contradictions. On the one hand, he says that he himself had no idea

about the nature and extent of the floods of 1958 and that he did not ask Desai or Khursale about the same, and on the other, he seemed to have grasped the significance of the answer given by Desai to him, viz., that the floods released by the breach of the Panshet dam would be greater than the floods of 1958, by asking a further question how much bigger. On two other points, the account given by Mohite is still more vulnerable. The first is that, when he asked Desai as to what would happen to the Khadakwasla dam, Khursale explained that a masonry dam like the Khadakwasla dam, even if overtopped, would not normally be breached, and the second is that an earthen dam was likely to breach when overtopped. It is impossible to believe that any engineer would make the statement that when an earthen dam was overtopped, there is likelihood of its being breached. It is a matter of elementary knowledge that overtopping of an earthen dam is necessary fatal. In the same way, every engineer in Poona, at any rate, knew that the Khadakwasla dam was an old and weak dam. That was also the view held by the Irrigation Department and on that basis attempts were made to strengthen that dam. For strengthening the Khadakwasla dam, a special division had been established known as Khadakwasla Dam Strengthening Division. I will consider as to whether Mohite and Prabhakar were aware of the weakness of the Khadakwasla dam and were also aware of the establishment of the Khadakwasla Dam Strengthening Division. For the time being, I am emphasising that every engineer attached to the Irrigation Department knew full-well that the Khadakwasla dam was a weak dam. Reliance is placed on the statements of Dr. K. L. Rao to show that the Khadakwasla dam was not weak. I will discuss this question and also the question as to what happened in 1958 and whether a fear was entertained at that time that the Khadakwasla dam would give way and, if so, whether the civil authorities were aware of this. Whether the civil authorities were aware of these facts or not, it cannot be disputed that Desai and Khursale were aware of these facts. That being the case, it is most unlikely that Khursale would tell the Collector that the Khadakwasla dam being a masonry dam would not ordinarily breach, even if overtopped.

The utter improbability of any such statement is so obvious that it is not necessary to discuss it at length. I will discuss the question presently as to whether the civil authorities were aware of the weakness of the Khadakwasla dam or were aware of the existence of the Khadakwasla Dam Strengthening Division a little later. But, it is crystal clear that the fact that the Khadakwasla dam was weak was known to every engineer. Khursale asserted that he knew about the floods of 1958. He added that he had read a copy of the letter written by Maydeo to Anand on 20th July 1958 (Ex. 395). He explained that he had seen the copy in the file of the C. D. O. He also explained that he had discussions with Anand and Dhanak ten days after the floods of 1958. When asked to state the occasion for the talks with Anand and Dhanak in the third week of July 1958, Khursale stated (Ex. 472) :

“Anand told me that there were heavy floods and that the water had reached above the danger point in the Khadakwasla reservoir and that the Khadakwasla dam was likely to breach as it was already weak. He remarked that even for maximum water level, i. e. 34 feet, the dam is weak. As a matter of fact, this mark had passed. Anand told me that they were anxious to know the data, such as the water level, etc. . . . . The talks with Dhanak took place in the C. D. O. office. Mr. Dhanak also told me that the water had gone beyond the maximum water level and that they feared breach of the dam and that they had anxious moments. He also added that the dam was already weak. This fact added to the anxiety.”

These answers were elicited by the Commission's counsel. The only challenge to these statements made on behalf of the civil authorities was whether Khursale



was speaking from memory when he was referring to the fact of having read the letter of Maydeo (Ex. 395) and also about the fact of having talks with Anand and Dhanak about the floods of 1958. I must, therefore, hold that Khursale had come to know of all that had happened during the floods of 1958. If that is so, it is impossible that he would tell the Collector that the Khadak-wasla dam being a masonry dam would not give way, even if overtopped. Again, it is impossible that any engineer would say that an earthen dam though overtopped was only likely to breach. Every engineer would say that it is sure to breach. Mohite was cross-examined on this point and he stated (Ex. 516) :

" I did not know nor was I told by Desai that overtopping is necessarily fatal. It was on the 16th July as a result of the talk with the Chief Engineer, Shri Pandit, that I came to know that overtopping of an earthen dam means that the dam is breached..... I might have mentioned to Shri Pandit that Khursale did not tell me that overtopping of the Panshet dam would lead to the breach of the dam, but, he really said that if the dam was overtopped, there was likelihood of it being breached. I did not complain to him that Mr. Khursale misled me on the point. I am unable to express any opinion on the suggestion put to me by the Commission, viz., whether any engineer, even with elementary knowledge of an earthen dam, would make a statement saying that even if the dam is overtopped there was likelihood of it being breached."

No question was asked to Pandit as to whether he told Mohite that overtopping of an earthen dam means that the dam is breached, nor whether Mohite had mentioned to him that this was not disclosed to him (Mohite) by Desai and Khursale but what they really said was that, if the dam was overtopped, there was likelihood of its being breached. Had there been any truth in Mohite's statement, then he would certainly have complained to Pandit that he was misled on the point. Mohite frankly admits that he did not complain to Pandit that Khursale misled him on the point. Mohite would not have even rest-contented with complaining to Pandit, but, he would have gone further and complained to the Government that Khursale had misled him on the point.

In trying to justify his departure to Bombay on the 12th July 1961, a topic to which I would devote lengthy consideration at a later stage, Mohite has attributed to Desai an extraordinary statement, viz., that, Desai had told him that in case the night passed off peacefully, the dam would be safe. He added that he took Desai on his word when he said that if the night passed off peacefully, the dam would be safe. The following questions and answers exchanged between the Commission and Mohite are worth citation (Ex. 516):—

" Q. Did you ask Desai as to why he felt that in case the night passed without a mishap, the dam would be safe ?

A. I did not raise that question. I accepted the opinion without hesitation.

Q. Is there any rational basis for the opinion supposed to have been ventured by Desai, viz., that if the night passed off without a mishap, the dam would be safe ? It is not as if that dams fail only during night time and are safe by day. Bearing this in mind, what is your reply to the above question ?

A. The only rational basis, according to me, is that the process of dumping of cement bags filled with sand and murum would be continued during the whole of the night with the military engineers' assistance already made available. Probably, Desai may have

taken into account the factor of the decrease in the rain from eight inches to one-and-half inches from the 9th July to 11th July 1951. Again, it should be noted that Desai had asked for 400 men and remained contented with securing the assistance of only two hundred men.

Q. That does not explain the emphasis upon the night of the 11th ?

A. Desai would be able to explain."

It is difficult to imagine any engineer telling a responsible administrative authority that there was danger to the dam only during the night and if the night passed off, then the dam would be safe. Evidently, danger to the dam continued till the process of sinking continued. No one could predict that the process of sinking could be stopped within a defined period. As matter of fact, as pointed out above, bag-stacking, according to the engineers, was not a remedy for stopping the sinking at all. The answers given by Mohite indicate the predicament in which he has placed himself by attributing an utterly irrational and unscientific statement to a senior engineer. Mohite tried to wriggle himself out of the difficult position by asserting that Desai had first asked for the assistance of four hundred Jawans and when he was told that two hundred Jawans would be made available to him for the night, he remained contented. For this purpose, Mohite has relied upon the last sentence in his letter (Ex. 94), which runs thus :

"Any force upto 400 Jawans would be required so that they can carry out the work continuously with shifts if necessary."

Mohite and his lawyers have emphasised the expression 'if necessary' contained in the above sentence. Mohite's contention that Desai demanded the assistance of four hundred Jawans to work at the same time has no legs to stand upon. If such an interpretation were to be put on the demand for four hundred men, then it means that Desai required eight hundred men—four hundred men to work in one shift and another four hundred in the second shift. No such position was put to either Desai or Khursale at any time. In answer to questions in cross-examination, Khursale stated that the idea that was conveyed to Mohite by Desai was that four hundred Jawans should work in two shifts. He, therefore, asserted that the words "with shifts if necessary", do not accurately convey our idea. The admissions of Prabhakar leave no room for doubt on this question. Prabhakar, in answer to questions by Mr. H. R. Gokhale, says (Ex. 421) :

"My understanding was that the army help was taken as supplementary to the civil labour, and to relieve the civil labour which was exhausted. The understanding was that 200 Jawans would go in the evening on the 11th and another batch of 200 would go the next morning."

Mohite is trying to take advantage of his own inaccurate language used in (Ex. 94). It is necessary to remember that the letter (Ex. 94) was written after his talk with Brig. Bedi on the phone and in the course of that talk, Bedi had made it quite clear that he would be able to send a batch of 200 men by the evening of the 11th and another batch of two hundred by the morning of the 12th July. Admittedly, Desai accepted this arrangement. When this arrangement was proposed and accepted, the letter (Ex. 94) should have clearly stated that the force of four hundred Jawans was to work in two shifts and there was no need of using the words 'if necessary', because the batches could only work in shifts and not simultaneously. Nobody had ever agreed that four hundred men would be sent to work at the same time. Therefore, the words, 'they can carry out the work continuously with shifts, if necessary' used in (Ex. 94) are meaningless. Four hundred men cannot carry out the work continuously and they had to divide themselves in shifts. When Mohite

realised the implication that a batch of two hundred men was agreed upon to go to Panshet on the morning of the 12th and that this would render the position taken up by him viz., that Desai assured him that if the night passed off peacefully, the dam would be safe, as untenable, he resorted to quibbling by putting a far-fetched and unnatural interpretation on the words used in (Ex. 94). There is one more circumstance, which clearly shows that the danger to the dam would not be passed by the mere passage of the night. The press-note (Ex. 428), which would be considered in detail hereafter, was evidently intended to be published in the issues of the local newspapers coming up on the 12th July. The publication of such news would be superfluous in case the dam were to be safe by the dawn of the morning.

The net result of the above discussion is :—

(1) The Collector while giving account to the Commissioner about the situation at Panshet, on the basis of the reports of the two engineers emphasised the gravity of the situation and the imminence of the breach of the dam.

(2) Desai in his talk with Manerikar on phone also laid stress on the abnormality of the situation which talk was within the hearing of Prabhakar and Mohite.

(3) Prabhakar was informed by the two engineers, earlier, that the breach in the dam was not likely to be confined to the T. W. W. section and therefore, the floods would be bigger than the floods of 1958.

(4) Mohite's story that he asked the engineers about their critical appreciation of the situation and that he was told that Panshet dam being an earth dam, if overtopped, was likely to breach and the Khadakwasla dam, being a masonry dam would not breach even if over-topped, is unbelievable.

(5) Mohite must have known about the extent of the floods of 1958.

(6) The engineers knew that Khandakwasla dam was weak and therefore they must have impressed upon the mind of the civil authorities that in case of breach of Panshet dam, the Khadakwasla dam was likely to breach.

(7) Mohite's story that the engineers told him that in case the night passed off safely, the dam would be safe is incredible.

(8) Army Jawans were to work in shifts, in batches of 200 (each). The fact that a batch of 200 Jawans was expected to work for the day on the 12th, shows the falsity of the story, viz., in case the night passed off, the dam would be safe.

(9) If the case set up by Mohite and Prabhakar is accepted, there was no need of devising any precautionary measures, because the continuance of the work of bag-stacking was ensured by securing the assistance of 200 Jawans for the night, in which case, the danger to the dam by night was averted and if night passed off, the dam would be safe.

(10) Alternatively, if the version of Mohite and Prabhakar is accepted, then also we must come to the conclusion that the administration have failed to discharge their duties properly, because, they ought to have pressed the engineers to give at least a rough estimate about the extent of floods, as was done by Collector Mone in 1958 and in case they expressed their inability, they should have approached other engineers such as Champhekar, Joglekar, Gadkary, Mayo or the Khadakwasla Research Station.

Now, it is necessary to consider the floods of 1958 ; the circumstances in which the breach of the Khadakwasla dam was apprehended ; the measures that were taken by the then authorities for meeting the emergency ; eventual setting up of the Khadakwasla Dam Strengthening Division and the knowledge of the civil authorities in respect of the above or any of its features. All these questions will be discussed in the Section dealing with the floods of 1958

## SECTION 10

## THE FLOODS OF 1958

The subject of 1958 floods is relevant from more than one point of view. Firstly, it was necessary for the civil authorities to know the nature and extent of 1958 floods for devising measures for meeting the apprehended breach of the Panshet dam in 1961, because even according to Prabhakar and Mohite, Desai took the floods of 1958 as a yard-stick when he told them that the floods of 1961 would be higher than the floods of 1958. Secondly, one of the questions, which naturally enters into the calculations for devising proper methods to meet the apprehended floods of 1961, was whether there was a possibility or likelihood of the Khadakwasla dam breaching. There is abundant evidence to show that the engineers did apprehend that the Khadakwasla dam might give way and expressed that apprehension to S. G. Barve, the then Secretary, Public Works Department, Bombay. The same apprehension was also conveyed by Maydeo, the then Superintending Engineer, D. I. C. No. II to Mone, the then Collector of Poona. The case put forward on behalf of the civil authorities is that in devising measures to meet the flood emergency, the likelihood of the breach of the Khadakwasla dam did not enter into the calculations. The question, therefore, is whether the measures devised, without taking into the calculations an important possibility, viz., the breach of the Khadakwasla dam, could be regarded as adequate. Thirdly, the measures that were taken to meet the flood emergency arising out of the possible breach of the Khadakwasla dam are also important for the purpose of comparing the measures taken on the 11th July 1961. There is evidence to show that certain measures were adopted in 1958 on the assumption that the Khadakwasla dam might breach. Actually, the Khadakwasla dam did not give way in the month of July 1958. Even so, the floods of 1958 were the highest in recent times or rather in the known history of Poona. Not only, therefore, the actual measures set afoot for meeting the actual emergency arising out of the floods are important but also the measures and the plan of action that were in contemplation of the authorities are equally important. Finally, the knowledge of Mohite, Prabhakar and Heble in regard to both the aspects of 1958 floods, viz., the extent of the actual floods as also the steps taken to meet the anticipated breach of the Khadakwasla dam, is relevant and would throw a flood of light in assessing the adequacy of the steps taken by the civil authorities during the floods of 1961. I have listed the reasons why I consider the evidence regarding 1958 floods as relevant, because it has been strenuously argued by the lawyers on behalf of the civil authorities that the entire evidence relating to the floods of 1958 is irrelevant and should never have been allowed to go on record. I have not admitted the evidence relating to the floods of 1958 merely for the sake of comparison of the measures that were taken then with the measures taken in 1961 as appears to have been wrongly assumed by the lawyers on behalf of the civil authorities. I am quite alive to the fact that it is not possible to lay down a hide-bound or cut and dry standard or pattern of the measures to be taken in flood emergency. These measures are bound to vary from situation to situation and no two situations would be precisely identical. I will consider this aspect at the appropriate stage. I have admitted the evidence relating to the floods of 1958 because that evidence is important on the various aspects which were considered in the present inquiry.

Broadly speaking, the position of the floods of 1958 stood as follows :—

The floods to the Mutha river started rising sharply from the 10th July 1958. On that day, the Executive Engineer, Poona Irrigation Division, informed the then Collector that on account of the incessant rains in the

catchment area of the Khadakwasla dam, there was danger of floods affecting the areas on the banks of the river Mutha and Mula on the night of the 10th July 1958. On receipt of this information Mone, the then Collector, informed the then District Superintendent of Police, Poona, the Municipal Commissioner, Poona, the President, District Local Board, the Mamlatdar, Poona City and others and asking them to take necessary steps to evacuate persons from the affected areas. The same afternoon, a press-note (Ex. 411) warning people of the possibility of the floods was also issued through the Regional Publicity Officer. Telegrams were sent to the Mamlatdars concerned of the possibility of similar floods affecting the areas on the banks of the Bhima river particularly of Dhond, Pandharpur and Ghod river near Narayangaon. At about 8-00 p.m. on the 10th July 1958, the water level at Khadakwasla rose to about thirty-four feet and several low lying areas in Poona city were affected by the floods and the hutments on either side of the Mutha river were washed away. A detailed report on the measures taken for evacuation, providing shelter etc., was submitted by the then Collector on the 11th July 1958, to the Government. On the 18th July 1958, about four-and half inches of rain was recorded in the catchment area of the Khadakwasla dam resulting in further rise in the already swollen waters of the rivers Mutha and Mula. At about 3-00 p.m. on Saturday the 19th July 1958, A. G. Maydeo, the then Superintending Engineer D. I. C. (II) telephoned to the then Collector and told him that in view of the continued rise in the level of water at Khadakwasla, the situation was fraught with danger. Maydeo stated that as the senior-most Irrigation Engineer in Poona, he considered it his duty to sound a note of caution that the Khadakwasla dam was very old having been constructed some 60-65 years ago ; that it was intended to take a column of water thirty-four feet high but that danger limit had long been passed and a column of water over thirty-seven feet high was pressing against it and there was no indication of the incessant rains abating. The Collector, therefore, convened a broad-based conference at 4-30 p.m. and the following persons and their assistants were present :—

- (1) The Collector of Poona.
- (2) The Additional Collector of Poona.
- (3) The Poona Municipal Commissioner.
- (4) The District Superintendents of Police, Rural and City.
- (5) The Superintending Engineer, Deccan Irrigation Circle No. II, Poona.
- (6) The Commandant of District Home Guards.
- (7) The Divisional Controller, State Transport, Poona Division.

Brig. Bedi of the Poona Sub-area and Major Talwar of the Bombay Engineering Group were also present at the conference. Maydeo was asked to give a list of the areas, which might be sub-merged as a result of the floods released by the breach of the Khadakwasla dam. With the help of a map kept in the office of the City Engineer, Poona Municipal Corporation, Maydeo prepared such a list, which was sent to the Collector's office. Copies of this list were got prepared by Chaturvedi, the then District Superintendent of Police, Poona, which were then read out to the officers who were charged with the work of carrying out the work of warning and evacuation in the emergency arising out of the breach of the Khadakwasla dam. Maydeo also demarcated the areas, likely to be flooded, with a red pencil on a map kept in the office of the City Engineer, Poona Municipal Corporation. A general warning was relayed over the Poona Station of the All India Radio. The warning was also

broadcast through the Police and the home guards informing the residents on the banks of the river Mutha of further expected rise in the level of water during the night and advising them to take shelter with friends and relations or in the Municipal schools or other shelters opened for the purpose. The Prant Officer was sent to the Poona Station of the All India Radio, once at 6-00 p.m. and second time at 7-00 p.m. All the available police and the home guards were deployed in the areas likely to be affected by the floods to keep an all-night vigil. All available buses of the Poona Municipal Transport and all State Transport buses were made available and kept in readiness for use in case large-scale evacuation became necessary. The representatives of the Defence Department also agreed to make additional transport available, if necessary. The Collector rang up K. L. Punjabi, the then Chief Secretary. At that time, the then Divisional Commissioner of Poona was sitting in the Chief Secretary's office. Mone apprised the Chief Secretary of the situation and the steps taken. The Chief Secretary and the Divisional Commissioner generally gave their approval but added that since there was a very distant possibility of the Khadakwasla dam giving way, no mention should be made of any threat to the Khadakwasla dam as it was likely to cause panic. At the same time, the Collector was informed that all necessary steps to meet the situation should be taken and the people should only be warned in general terms. A little later, S. G. Barve, the then Secretary, Public Works Department, telephoned to the Collector, Poona, and told him that the possibility of the breach of the Khadakwasla dam was remote, and, therefore, nothing should be done to cause panic in the minds of the public. At this stage, it is necessary to know how Barve came to know about the developments that were taking place at Khadakwasla and Poona. At about 3-30 or 4-00 p.m. on the 19th July 1958, Pandit, Chief Engineer, stepped into Barve's room and informed him that the water level at the Khadakwasla dam had risen to a dangerous heights. He stated that since the Khadakwasla dam was an old structure, one could not be sure whether it would withstand the pressure. It was still raining in Poona and the level seemed to be rising. Dhanak came in the room either along with Pandit or a little later. Barve asked the engineers to make quick calculations about the extent of flooding in Poona in case the Khadakwasla dam breached. Dhanak made quick calculations and reported that taking the worst possibility, the water level would rise to a height of about thirty feet over and above the normal flood level. Barve got this communicated to the local authorities either the Collector or the Divisional Commissioner, Poona. By mid-night, the water level started falling down and the danger to the Khadakwasla dam disappeared. According to Barve, it was known for a number of years that the Khadakwasla dam had some infirmities. The danger to the Khadakwasla dam as a result of heavy floods of the 19th July 1958 was very real and was vividly brought home to the authorities concerned. To conclude this part of the narration, it may be mentioned that Maydeo wrote a letter (Ex. 395) to Anand, Additional Chief Engineer, Irrigation, on the 20th July 1958 narrating the steps taken by him on the 19th July 1958. It may also be mentioned that actually, the Khadakwasla dam did not breach and the measures contemplated by the then Collector and the District Superintendent of Police were never required to be set on foot.

#### I. Condition of the Khadakwasla dam in 1958 and 1961

I will first of all deal with the position of the Khadakwasla dam as it stood in 1958-1961. The Khadakwasla dam was constructed in 1874-75. According to Chief Engineer Pandit, the main drawback of the Khadakwasla dam was that, it was not constructed for uplift pressure. Pandit further says that after the severe floods of 1958, attention of the Government was focussed on the question of taking immediate steps for strengthening of the

Khadakwasla dam. Three days after 19th July 1958, when the breach of the Khadakwasla dam was apprehended, Pandit put up a minute suggesting ways and means as to how the Khadakwasla dam should be strengthened. It is at Ex. 54 dated 22nd July 1958. Barve, the then Secretary, Public Works Department, remarks below the minute "I entirely agree with the C. E. (IP) that they cannot take any chances with the Khadakwasla dam". Government thereupon decided that necessary action should be taken at the earliest possible time. A committee of four officers was appointed to study the problem in the light of the experience in the past regarding strengthening of the old dams. Even before, in view of the inherent weakness of the Khadakwasla dam, which was built as a gravity dam, earth-backing was given as additional strength for withstanding the uplift pressure of the water column. The Khadakwasla Dam Strengthening Division was created in 1960 by a Government Resolution dated 14th October 1960 (Ex. 441). The Committee of experts suggested various ways of strengthening the old Khadakwasla dam. One was to give masonry or rubble backing to the existing dam. The other was to put stress-cables in accordance with what is known as Coyne's method. It is common ground that none of these measures for strengthening the Khadakwasla dam was adopted, because there was difference of opinion among the experts about the utility of any of these methods. The method of rockfill was seriously considered. But, this method too had its difficulties. The exact determination of the pressures exerted by a rockfill on the dam wall was complicated by various factors. Calculations for rock pressures were uncertain. Again, whether the rockfill would exert active pressure under loaded conditions or whether it would exert pressure corresponding to the state at rest was also doubtful. Pandit, therefore, says that the problem was referred to A. Mayer, a consulting Engineer from France. Mayer advised against the use of rockfill, since he felt that 'when rockfill would settle, arching may take place and then even with good compaction, results would be doubtful and computations would be practically impossible.' Mayer, therefore, advised the use of masonry backing. According to Pandit, this proposal involved danger to the existing dam due to blasting operations required for excavating into the rock for the foundations of masonry backing. Studies had, therefore, to be undertaken to determine the method of safe-controlled blasting. The I. C. I. and C. W. and P. R. Station were consulted on this point. Finally, in November 1960, an estimate was prepared for strengthening the dam by this method, the cost being one crore of rupees. The proposals were discussed with the Chief Engineer (Irrigation) in January 1961. The remarks of the Chief Engineer (Irrigation), were complied with and the proposals resubmitted in April 1961. It was intended to take up the work for execution during the year 1961-62 (Ex. 60). Pandit further explains:

"It was considered that due to the flood moderation effected on the completion of the Panshet dam by June, 1961, the danger to the Khadakwasla dam would be appreciably minimised."

It was suggested in the cross examination of Manerikar, Additional Chief Engineer (Ex. 663) that the project of strengthening the Khadakwasla dam was abandoned or, at any rate, kept back. Manerikar denied that suggestion. This cross examination was based on the minutes of the meeting held on 13th April 1961 (Ex. 683) regarding the progress of works for the financial year 1960-61. At paragraph (7) of Ex. 683, it is stated:

"Due to the curtailment of funds, it has now been decided to keep the Khadakwasla Dam Strengthening Division and the Khadakwasla Canal Division No. III of the Khadakwasla Project in abeyance."

Manerikar explained that, what the above sentence means is that the field establishment was held in abeyance because the work was not commenced

in the season. He asserted that investigations were going on, though the actual work of strengthening had not yet commenced. The argument advanced on behalf of the civil authorities is two-fold: Firstly, it is contended that it is not true that the Khadakwasla dam was a weak dam and secondly, that neither the engineers nor the Government considered the dam to be a weak one, as is clear from the fact that from 1958, when the breach of the Khadakwasla dam was supposed to have been apprehended, nothing concrete was done for enforcing the dam, although a Dam Strengthening Division had actually been established.

For the proposition that, as a matter of fact, the Khadakwasla dam was not weak, reliance is sought to be placed on the deposition of Dr. K. L. Rao (Ex. 758). In answer to a question by Mr. Champhekar, on behalf of the Committee of the Institute of Engineers, Dr. Rao stated:

“I do not subscribe to the view that the Khadakwasla dam is weak.”

This is just one sentence in a lengthy reply given by Dr. Rao to a very technically complicated question put by Mr. Champhekar. This sentence cannot be shorn out of its context and raised to the position of a separate assertive proposition. It would be worthwhile to quote the question as also the answer in full:

“Q. Do you consider that it is a sound practice to have storages in the dam in the upper reach higher than that in the dam at the downstream considering particularly the following facts:—

- (1) The spills from the upper dam are obtained into the storage of the downstream dam,
- (2) The distance between the upper dam and the lower dam is comparatively very small, and
- (3) The lower dam, in this particular case the Khadakwasla dam, is known to be definitely weak?

A. It is perfectly a sound practice to have dams upstream of an existing structure to the maximum capacity that will be required in the interest of development. I do not subscribe to the view that the Khadakwasla dam is weak. Assuming that the Khadakwasla dam was a weak dam, which I do not subscribe to, the safety of the dam would be increased as a result of the water being stored in the two dams in the upper reaches.”

Later on, Dr. Rao pointed out that the Khadakwasla dam with earth backing that was put up is structurally safe. The question that was asked to Dr. Rao did not relate to the factual position of the Khadakwasla dam nor to his view about the condition of that dam. Furthermore, no specific questions were asked to him on that point. Had such questions been asked, perhaps, his knowledge and views about the Khadakwasla dam would have come to light. The answer given by Dr. Rao must be considered in the context as to whether it was a sound practice to have dam or dams upstream of an existing structure. Dr. Rao was asked to consider this question with reference to the three aspects and one of them was viz., that the Khadakwasla dam which was a lower dam, was known to be a weak dam. What Dr. Rao said was that the Khadakwasla dam was not structurally weak because of its earth-backing. This reply has been given from an engineering point of view. Nobody says that the Khadakwasla dam was structurally weak. What is stated on behalf of the Irrigation Department is that the Khadakwasla dam was not designed according to modern concepts and the effect of the uplift pressure was not considered while it was constructed. Pandit has pointed out that an analysis of the stresses showed that considerable tension developed at the upstream face, a condition which modern design concepts do not permit. It is in evidence



that the original Khadakwasla Project in 1954 made provision for the strengthening and raising of the height of the dam, but, this proposal was later abandoned in favour of a new masonry dam to the downstream of the existing dam. To try to clutch at the answer given by Dr. Rao is like a drowning man trying to catch a straw. Another point, which was stressed by Dr. Rao was that, as a result of the construction of the Panshet dam upstream of the Khadakwasla dam, there was moderation of flood and thus the safety of the Khadakwasla dam would be increased. Even then, Dr. Rao admitted that the spillway arrangements were not hydraulically good and they would normally require remodelling. He added that the defective spillway system at Khadakwasla could be safer in case there was less water to spill, both in magnitude and in time and this would happen on account of the construction of reservoirs upstream of the dam. He pointed out that damage to any structure is the function of the time to which the structure is subjected to the heavy forces. He then pointed out that designing the lower structure by providing for a spillway for a flood, which would have come without the construction of the reservoirs upstream, is itself a very conservative practice. That means that according to Dr. Rao, the spillway arrangement at the Khadakwasla dam was defective and would have been required to be remodelled in the ordinary course, but, even the existing spillway would work safely in case, reservoirs are built up upstream of the Khadakwasla dam. Whether the defect in the Khadakwasla dam is structural or is in the spillway arrangement is a matter of little consequence. The dam might fail on account of either of these defects. No question was asked to Dr. Rao as to what would happen to the Khadakwasla dam structure in case the column of water rose considerably above the designed level. Nor was he asked the question as to what would happen if the Khadakwasla dam were to be overtopped. The following answers given by Anand, Chief Engineer (Irrigation) would throw light upon this aspect of the matter (Ex. 393) :

“ There was a contingency in the floods of 1958 that the Khadakwasla dam would breach. Whenever the water level rises beyond the designed level, the contingency of the breach of the dam always exists. The possibility of the dam breach becomes greater as the water level rises beyond the designed. The higher the water level, the greater the contingency. The greatest danger in the case of masonry dams is just at the point of overtopping.”

It is significant that no question was asked to Dr. Rao (nor was it necessary to do so) as to what would happen to the Khadakwasla dam in case of the breach of the Panshet dam. The question that we are considering here is as to whether it was likely that the two engineers, Desai and Khursale, would tell Mhoite and Prabhakar in all seriousness that even if the Panshet dam breached, the Khadakwasla dam, being a masonry dam, would not ordinarily breach. Having failed to confront Dr. Rao with any such problem, it is not fair either to Dr. Rao or to the interests of finding out the truth to rely upon a stray sentence from his deposition that the Khadakwasla dam was not structurally weak.

Again, in view of the explanation offered by Pandit as to why none of the various methods for strengthening the Khadakwasla dam, which came up for discussion with the experts, was brought into operation, it is improper for the civil authorities to ask the Commission to draw the inference that the engineers never felt that the Khadakwasla dam was weak or it required strengthening, because no measures for its strengthening were adopted till the actual breach of the Panshet and Khadakwasla dams. Not only the lawyers on behalf of the Civil authorities but even the Commission's counsel has tried to ridicule the suggestion that the Khadakwasla dam was weak,

on the ground that had the dam been weak, some measures for its strengthening would seriously have been undertaken. On this point was as also on many other points, the Commission's counsel has supported the containments put forward on behalf of the civil authorities. Both of them have forgotten that although a new urgency was added to the need for strengthening the Khadakwasla dam on account of the floods of 1958, still, that urgency had receded to the background, to a certain extent, by reason of the construction of the Panshet dam in the upper reaches of the Khadakwasla dam, resulting in considerable flood moderation. Of course, the Panshet dam was not constructed for failure and if the Panshet dam had stood, there would have been no danger to the Khadakwasla dam. The engineers, who had to face difference of opinion and technical difficulties in adopting a particular measure for strengthening of the Khadakwasla dam, never anticipated the breach of the Panshet dam and, therefore, were entitled to take a somewhat complacent view regarding the strengthening of the Khadakwasla dam by reason of the construction of a bigger dam in the upper reaches. This important aspect viz., the effect of construction of a dam in the upper reaches on the floods to be received in the Khadakwasla reservoir, has been conveniently ignored by the Commission's counsel as also by the lawyers on behalf of the civil authorities.

To sum up :—

- (1) Khadakwasla dam was known to be a weak dam.
- (2) The floods of 1958 gave a new urgency to the idea of strengthening the dam, as it was then apprehended that the dam would give way.
- (3) No concrete steps for strengthening the dam were taken for—
  - (a) There was sharp difference of opinion amongst the technicians regarding the use of a proper method of strengthening the dam.
  - (b) As a result of the construction of Panshet dam in the upper reaches, flood coming on at Khadakwasla would be moderated.
- (4) In view of the known position of the Khadakwasla dam and the fact that a separate division was established for strengthening the dam, it is impossible that khursale and Desai would tell Mohite or Prabhakar that there would be no damage to Khadakwasla dam, even if Panshet dam breached.

**II. Was the breach of the Khadakwasla dam apprehended in 1958 and, if so, what steps were taken in the Secretariat and also by the local authorities in Poona ?**

S. G. Barve asserted that it was known for some time that the Khadakwasla dam was a weak structure and required strengthening. He added that it must be common knowledge with the concerned engineers and other connected authorities, at any rate, since 1958 that the Khadakwasla dam was a weak structure. He opined that the Collector and the Divisional Commissioner, in normal course, would get to know about the position of the Khadakwasla dam. He then pointed out as to what took place in the afternoon of the 19th July 1958 and how Pandit and Anand expressed their anxiety whether the Khadakwasla dam would withstand the pressure of the rising column of water in the reservoir. He asserted that on 19th July 1958, the danger to the Khadakwasla dam was vividly brought home to him and the others concerned. According to Barve, quick calculations were made by Pandit and Dhanak, both of whom came to the conclusion that by taking the worst, possibility, the flood level after the breach of the Khadakwasla dam would rise to thirty feet above the normal flood level. On all these points, Barve has been fully supported by Dhanak and Pandit. Anand,

however, says that Dhanak was not present when he and Pandit held discussions with Barve regarding the remote contingency of the breach of the Khadakwasla dam in 1958. Anand also states that there were no calculations made by anybody to his knowledge, about the expected rise of water due to the possible breach of the dam at Khadakwasla. The witnesses on the point viz., Barve, Pandit, Anand and Dhanak, were speaking from memory and some difference on minor points was bound to arise as to what actually happened and who was present. Both Pandit and Dhanak are positive that quick calculations were made by them and the result arrived at was that there would be a rise of thirty feet of water over the normal flood level. These calculations were made taking into account the worst possibility, meaning that a large chunk of the Khadakwasla dam might breach. Although the word 'calculations' has been used, all the three engineers have made it clear that, what is meant by these quick calculations is an intelligent guess. All of them have also made it clear that although the estimate of the extent of the floods depends upon several assumptions, an attempt has got to be made to arrive at an estimate by making assumptions in the light of their knowledge and past experience. In answer to questions by Mr. Ghaswala, Anand stated (Ex. 393) :

" I can make a guess and one has to make a guess about the extent to which the floods would spread and the level to which it would rise in case a breach in the dam is expected. The calculations would depend on the extent of the breach. I cannot tell you by what percentage of margin it would be wrong. It cannot be completely wrong. If the calculations are based on the assumption that the breach would be 200 feet wide, and if it turns out that the breach is 500 feet wide, then the guess may be wide of the mark. The depth of the breach, the depth of the valley, the topography of the valley, the distance between the place of the dam and the city, the contours of the place and the slope of the river are the factors which have got to be taken into account. A rough guess about the possible rise of water in the city of Poona could be made in the course of ten to fifteen minutes, because certain data is available, such as the flood level reached in 1954, 1958 etc. and we have to calculate as to how much more flood would be superimposed on the level already reached as a result of the additional discharge due to a breach."

Anand added that the problem of strengthening of the Khadakwasla dam gained a new urgency due to the floods of 1958, as it was known to the engineers since many years that the Khadakwasla dam would have to be strengthened. On a further clarification having been sought by the Commission, Anand stated that as a matter of fact, only two assumptions were required to be made viz., (1) the extent of the breach and (2) the depth of the breach. The remaining factors were known or could be known.

Before proceeding further, it is necessary to refer to the evidence of Joglekar (Ex 225), ex-Director of the Khadakwasla Research Station and an expert in Hydraulics of international fame. Joglekar mentioned two factors, which must be taken into account, for correctly estimating the levels of floods in the city of Poona on the assumption that there would be a breach in the Panshet dam, (1) the contours of the area between Panshet and Khadakwasla and between Khadakwasla and Poona and the contours of the Poona city itself, and (2) the length of the breached portion of the dam. He then proceeded to say (Ex. 225) :

" On the basis of the above data, it will be possible to make a correct estimation of the flood levels in the city of Poona. The above factors will be taken into account on the basis that the Khadakwasla dam has not breached. The Khadakwasla dam was known to be a weak dam and once the Panshet

dam breached and 7,000 mcft. of water stored therein rushed out and entered Khadakwasla reservoir, the Khadakwasla dam also was bound to give way eventually. Therefore, in making any calculations about the possible flood level that would be reached in the city of Poona, this factor viz., the breach of the Khadakwasla dam also, will have to be taken into account. Again, in making the calculations, the time-lag between the receipt of water in the Khadakwasla reservoir and actual breach of the Khadakwasla dam will have to be taken into account. It is, of course, difficult to make an accurate estimate of the floods. At the same time, it is possible to make a fairly intelligent estimate based on the experience of topography and the previous experience of the floods, more particularly, 1958 floods. It is possible to estimate the extent of the distance on both sides of the river about the spread of water. The extent of the deepest section of the Khadakwasla dam was about 1,000 ft. and we will have, therefore, to assume that the entire length of 1,000 ft. has breached and make calculations on that assumption. I may assume that the extent of the breach in the Panshet dam may be between 800 and 1,000 ft. .... I am making these assumptions so as to prepare for the worst. About 1 1/2 hours will be taken by the water in Panshet reservoir to reach Khadakwasla reservoir. The entire lake of Panshet will be depleted within an hour or two hours. An estimate can be made about the possible absorption of the flood in the valley between Panshet and Khadakwasla and between Khadakwasla and Poona. It is always better to make assumptions and estimates so as to err on the safe side. The margin of error is very large. Supposing I make an estimate that the floods would spread 2,000 ft. on both sides of the river, but actual rise may be confined to 1,200 ft. on both sides, in which case the estimate would be 75 per cent wrong. If I find that on the assumption that the lake would be depleted in one hour, the discharge would be of the order of 45 lakhs cusecs, peak flood, then I will revise my assumption of one hour and make it two or three hours, i.e., to a reasonable period. The main factor that would upset the calculations would be the length of the breach in the two or either of the dams. .... The error in width on either side may be of the order of even 75 per cent. to 100 per cent. An element of speculation is bound to enter in making the calculations about the flood discharge. But, even a speculative endeavour of making an estimate would be fruitful if it is undertaken by a man of experience, i.e., a person who knows hydraulics, hydrology and topography. Even in the case of an experienced man, the margin of error may be even 100 per cent. What I mean is that the margin of error for calculating the height would not be of that order. That margin would be very much less, because we know the slopes of the ground to be submerged. The statement regarding the margin of error has reference to the width to which the water may spread. The error so far as the width, to which the flood would spread, is an error on the plus side i.e. a safer side. It would not be a foolish error but a wise error. When one says that the margin of error may be of the order of 75 per cent. it does not mean an alternative between the floods and no floods at all. It is not an error like plus-minus. It is an error on the safer side."

I have cited the above passage at some length, because it will be of relevance for deciding the question as to whether calculations could be made in 1958 and 1961 for estimating the rise of water on the assumption of the breach of the Khadakwasla dam or the Panshet dam or both as the case may be. The story that rough calculations were made in 1958 by Pandit and Dhanak has been sought to be pooh-poohed on behalf of the civil authorities by citing the evidence of Joglekar and also some other evidence such as that of Manerikar and Padhye and also on the ground that Dhanak's conclusion that there would be a rise of

thirty feet would submerge the bulk of Poona and only high places near the foothills would be safe. Joglekar and Anand both have stated that in the situation of crisis, one has to make some calculations. It may come out wide of the margin. It is, however, worthwhile making some calculations. Some calculations are better than no calculations. It is, therefore, no wonder that Pandit and Dhanak undertook the task of making quick calculations. These calculations, of course, were not conveyed to the local authorities. They would perhaps have been conveyed had the report during the night time not shown that the floods were abating. Joglekar has stated that he learnt from somebody in the research station that the Bombay Government officials had made some estimate about the possible rise of flood levels in the Poona City on the assumption that the Khadakwasla dam would breach. He adds that this was a matter of common knowledge and everyone seemed to know about it. Under the rules of Evidence, it is, of course, hearsay evidence. Even so, the fact remains that a man like Joglekar states that this fact had become a matter of common knowledge. Joglekar has pointed out the difficulty in making a correct estimate. He has stated that for doing so, a man experienced in hydraulics, hydrology and topography would be needed. Even Pandit has stated that he had read a book by Barrow called 'Floods', and that is why he was able to make quick calculations on the 19th July 1958. Basing themselves on these answers, it was contended by the lawyers on behalf of the civil authorities that Desai and Khursale who are ordinary men, would not be in a position to make even rough guess. Khursale has a first class academic career to his credit and has been working in the Central Designs Organization. It cannot, therefore, be laid down *a priori* that it was not possible for him (Khursale) to make these calculations.

The other argument viz., that on the calculations made by Pandit and Dhanak which suggested that there would be a rise of thirty feet of water, the bulk of the city would be submerged, is based on a misconception. What Dhanak stated was that there would be a rise of thirty feet of water over the normal flood level. He never said that the rise of thirty feet would take place over and above the flood level already reached on the evening of the 19th July 1958.

I will now proceed to consider on what footing Maydeo proceeded to calculate the estimated rise of water as a result of the possible breach of the Khadakwasla dam. Although Maydeo was not in charge of the Khadakwasla dam (One Shivraj was in charge of the dam as Superintending Engineer, D.I.C. No. 1), still he thought it to be his duty to warn the then Collector as a seniormost irrigation officer present in Poona on the 19th July 1958. The then Collector held a conference with the then District Superintendent of Police and the Municipal Commissioner and asked Maydeo as to what would happen if the Khadakwasla dam breached. Maydeo was reluctant to make a commitment. The Collector pressed him to mention the areas, which were likely to be affected by the possible floods. He also asked Maydeo about the interval of time between the breach of the Khadakwasla dam and reaching of the floods to the city of Poona. After going to the office, Maydeo took the assistance of Bhalerao and made approximate calculations about the possible discharge of the floods. They made two assumptions, (1) there would be breach in the dam and (2) approximate extent of the breach would be about 200 to 300 ft. On these assumptions, he estimated that the rise of water would be ten feet above the existing level. It has been strenuously argued on behalf of the civil authorities that there is divergence between the estimate formed by Maydeo and the estimate formed by Dhanak. There is not much substance in this argument. First of all, the assumption made by Maydeo was that the extent of the breach would be about 200 to 300 ft., whereas Dhanak was taking the worst possibility into account i.e., much larger extent in the breach. Secondly, whereas Maydeo was speaking about

the rise of ten feet over and above the existing flood level, Dhanak spoke about the rise of thirty feet above the normal flood level. As the then Collector insisted to indicate the areas, which were likely to be flooded, Maydeo went to the office of the City Engineer, Poona Municipal Corporation and marked out, in red pencil, the areas likely to be submerged in flood water. Maydeo positively asserted that it is not at all difficult for the engineers to mark out the areas likely to be affected by the floods. He, however, added that, in order to mark out the areas on the map, it was necessary to mention the actual level of the floods, which then prevailed. He stated that as far as he remembered, the markings varied from one furlong to two furlongs on each side of the river. Bhalerao, who assisted Maydeo in making these calculations, stated that at the time when calculations were made, the level of water at Lakdi Bridge was somewhere between the crown and the springing of the arch. He supported Maydeo by saying that, according to the calculations made by them, water would rise by ten feet over the then level of the flood water.

I will now deal with the localities mentioned by Maydeo and also the question as to whether the markings were actually made by Maydeo on a map in the office of the City Engineer, Poona Municipal Corporation. Although Maydeo does not specifically say that he went to the Municipal office with Chaturvedi, the then District Superintendent of Police, Poona, Chaturvedi is positive on the point and asserts that he drove Maydeo to the office of the City Engineer, because no contour map was available in the Collector's office. In the office of the City Engineer also, no contour map was available, but there were some maps kept hanging on the wall and on one of those maps, Maydeo made markings in red pencil. According to Maydeo, this was a spot-level map. This part of Maydeo's evidence was not seriously challenged on behalf of the civil authorities. In the same way, Chaturvedi, who fully supported Maydeo, also was not subjected to any cross examination on this point on behalf of the civil authorities. One of the points, on which Chaturvedi's evidence was sought to be discredited in the written arguments submitted on behalf of the civil authorities is that, whereas Maydeo spoke of the rise of ten feet of water, Chaturvedi spoke of Maydeo having mentioned a thirty feet rise in the level of water. It is suggested that Chaturvedi has made this confusion, because he must have read in the newspapers that according to Dhanak's calculations, there would be a rise of thirty feet in the level of water. Many more uncharitable comments have been made against Chaturvedi and the way in which he gave evidence, and I will deal with them presently. For the time being, it is necessary to note that Chaturvedi was never positive about the figure mentioned by Maydeo. When his attention was drawn to Maydeo's statement that the rise would be ten feet, Chaturvedi stated (Ex. 840) :

"I was not interested in the actual figure of the rise of the water and, therefore, I would not be able to say whether what Maydeo says is accurate.

What I was interested in was to know the localities which would be flooded by the water and to have them marked out on a map."

Chaturvedi was speaking from memory and if he committed any mistake about the actual figure mentioned to him, no fair-minded person would blame him for his lapse of memory.

At this stage, I will consider the deliberately false evidence that has been sought to be introduced on behalf of the civil authorities in regard to the story of Maydeo going to the office of the Municipal City Engineer and making markings on a map there. Two variations in Maydeo's version have been suggested by S. B. Kulkarni, Municipal Commissioner and Yadav, the present City Engineer. It is common ground that on the 19th July 1958, one

Neurgaonkar was the City Engineer and Yadav was his assistant. Neurgaonkar has since retired and Yadav became the City Engineer in his place and at the time he gave evidence he was holding that post. Neurgaonkar has not been examined. It is, however, undisputed that Yadav was present when Maydeo and Chaturvedi went to the office of the City Engineer and made markings on a map. The variations are :

(1) The rise in the level of water suggested by Maydeo was five feet over the existing level and not ten feet, and

(2) Maydeo did not actually mark the map in red pencil or in any other way, but he only showed them by fingers.

A letter was written to the Municipal Commissioner asking him whether the map or plan, on which markings were made, was in existence. Kulkarni replied that such a map or plan was not traceable. In his deposition (Ex. 638) he explained :

“I tried to ascertain as to whether there was a map or plan or any other document in which any such areas have been marked or shown. I did not ask Neurgaonkar about this. I asked Yadav about this. He told me that at about 5-30 p.m. on the 19th, Maydeo went to the office of the Corporation which was then located in the Vishrambagwada, Sadashiv Peth. He further said that consultations were held by him, Maydeo and Neurgaonkar, in which Maydeo asked a question to Neurgaonkar as to which areas will be affected in case the level of water were to rise by five feet over the existing flood level. Mr. Neurgaonkar then pointed out by his fore-finger those areas on a map that was in the office. No markings, however, were made on that map. I did not ask Yadav which were those areas.”  
(The quotation is not continuous).

It would at once be clear that this part of Kulkarni's evidence is hearsay according to the rules of evidence. Repeated complaints have been made on behalf of the civil authorities that considerable hearsay evidence has been admitted in this case. The complaint, in this connection, is apparently restricted to such of those statements, which are unfavourable to the civil authorities. No complaint has been made so far as the admissibility of the above evidence is concerned. Leaving this technical aspect out of mind, let us turn to Yadav's evidence (Ex. 793). It is interesting to note that Yadav was asked to mark out lines on a map showing the actual (1961) flood line and also the line according to the estimate alleged to have been made by Maydeo, viz., that there would be a rise of five feet of water. At the outset Yadav stated that he was asked by the Municipal Commissioner through Sub-engineer Devre to prepare a map showing the two lines, viz., the lines as per instructions given by Maydeo and the lines of the flood water of 1961. He then stated that he handed over the map to the sub-engineer who gave it to the Municipal Commissioner and he did not know how the map went into the possession of Council Ghaswala and his assistant. However, immediately thereafter he stated that it was Murudkar who handed over the map to him with instructions that the localities mentioned by Maydeo should be marked on this map and for that purpose he was called by Murudkar to his office in the Poona Club as also for giving him instructions. Nowhere has Kulkarni stated that he had instructed Yadav to go and see his Advocate, take his instructions and prepare a map in accordance therewith. In answer to questions by the Commission's Council, Yadav stated as follows (Ex. 793) :

“I know that Mr. Maydeo, the then S. E., D. I. C. (II) had visited the City Engineer's office on one day in July 1958. ....  
Neurgaonkar showed Mr. Maydeo several maps of the city of Poona.  
Neurgaonkar showed certain localities, which, according to him, were likely

to be submerged in case the level of water was to rise by five feet higher than the existing level. *I do not remember whether Maydeo marked out those areas on any of the maps.*"

In answer to questions by Mr. Sawant, on behalf of the Citizens' Committee Yadav admitted that markings were made by Maydeo on the assumption that the water would rise five feet above the then existing level. He began by saying that he did not remember whether Maydeo marked out certain areas on the maps. He was emphasising that it was Neurgaonkar, who showed certain areas. Suddenly, he blurted out that the markings were made by Maydeo, may be on the assumption that the rise of water would be five feet above the then existing level. In answer to further questions, Yadav made the following important admissions (Ex. 793) :

"On the 11th and 12th of July, the map that was marked out by Maydeo was in the Development Engineer's office and was not with me, because by that time I had become the City Engineer."

This admission makes it clear that Maydeo had marked out certain areas on a map and that the map was in the Development Engineer's office till the 12th July 1961. Yadav was then asked to produce the map which he did. There is some significance in this map produced by the witness so far as the manner in which the lawyers on behalf of the civil authorities were carrying on their work. Therefore, it is necessary to deal with this aspect, although that does not throw much light upon the question which is under discussion. The story may be set out briefly as follows :

Yadav says that he was asked by the Sub-Engineer Devre to prepare a map on instructions from the Municipal Commissioner. Devre told Yadav that two lines should be shown on that map viz., one line as per instructions given by Maydeo and the other line relating to the flood level of 1961. Yadav handed over the map to Devre and Devre in turn handed it over to the Municipal Commissioner. Yadav stated :

"I do not know how the map went into the possession of Counsel Ghaswala and his assistant."

At this stage, Mr. Murudkar rose up and explained that the map was given to him by the Municipal Commissioner about one or two months back. In answer to further questions Yadav stated :

"Three or four days back, Advocate Murudkar handed over the map to me with instructions that the localities mentioned by Maydeo should be marked on this map. Advocate Murudkar had called me to his office at the Poona Club for giving me instructions. That is why I had gone there."

It would thus be seen that, according to the instructions given by the Municipal Commissioner, two lines were drawn by Yadav on the map, one showing the areas as per instructions given by Maydeo and the other showing the level of flood water of 1961. If that is so, I fail to understand why the witness was called to the Poona Club and why Advocate Murudkar gave him instructions to mark out the localities mentioned by Maydeo on the map. The witness has frankly admitted that Advocate Murudkar had called him to his (Murudkar's) office at the Poona Club for giving him instructions and that is why he (Yadav) had gone there. The expression "giving me instructions" is wide enough to cover instructions as to what he should depose to before the Commission. As pointed out above, the earlier sentence, showing that Mr. Murudkar gave him instructions for mentioning the localities marked out by Maydeo on the map, was absolutely redundant, because already such a line was drawn on the map by the witness. That being the case, the admission given by the witness as shown in the last sentence, was extremely damaging



to the reputation of the advocates representing the civil authorities. Mr. Ghaswala was present when these questions were asked by Mr. Sawant, on behalf of the Citizens' Committee. It seems that Mr. Ghaswala became extremely restive at the disclosures made by the witness. The witness was prevaricating so far as Maydeo's markings on the map was concerned. I had, therefore, to give him warning to speak out the truth. Mr. Ghaswala tried to interrupt at two or three stages, when the witness was giving replies. I had to warn him not to cause interruptions at vital stages. It is from this day that Mr. Ghaswala stopped attending the proceedings in the open session. Mr. Ghaswala has voiced a general complaint that I used to warn witnesses that they were telling lies and that they were not disclosing the truth. Occasionally, I had to tell a few witnesses including Yadav that they did not appear to be telling the truth and ask them to speak out the truth. Such a warning is legitimate and is given by all the Judges in appropriate cases. No generalisation can be made and each case has to be considered on its own merits. Mr. Ghaswala's grievance that my warnings to witnesses to speak the truth and my warnings to Mr. Ghaswala not to interrupt at vital stages was a legitimate cause for his resentment, is devoid of all substance. In spite of severe provocations at the hands of Mr. Ghaswala, I never treated him with discourtesy, and till the day he thought fit to withdraw from the case, he did not show that he had any grievance so far as my treatment to him was concerned, although he may have grievance on the ground that some of the rulings given by me went against him. Had Mr. Ghaswala any grievance about the treatment till the 10th July 1962, when Yadav was being examined, he would certainly have withdrawn long before that day. The reason, therefore, for his withdrawal must be sought elsewhere, and as I have pointed out in my order below (Ex. 828), that reason appears to be the disclosure, and a very inconvenient disclosure, made by the witness viz., that Advocate Murudkar had called him (Yadav) at his office at the Poona Club for giving him instructions. This is an euphemistic way of saying that the witness was called for giving instructions as to what was to be told before the Commission. This implication of the answer is bound to upset any advocate and that appears to have happened in the present case, so far as Mr. Ghaswala is concerned. It is all very well for Mr. Ghaswala to trot out a general allegation that treatment to the witnesses and treatment to him personally by the Commission was rough or discourteous. At this stage it may be of interest to recall one incident which took place while Mohite was in the box. A question was asked to Mohite to the following effect :—

“ Will you admit that the principal ailment of the dam was that it had started sinking at a certain portion. Did you ever apply your mind to the question as to the effect of continuous sinking and also to the question whether the dam can ever be considered to be safe if its sinking had remained continuous ? ”

To which Mohite replied :

“ I agree that the main ailment was that the portion of the dam had started sinking. I never knew that the sinking was continuous. ”

At this stage, the Commission asked him “ whether the sinking was continuing ”. Immediately Mr. Ghaswala rose up and said that the witness would not know the difference between ‘ continuous ’ and ‘ continuing ’, and the Commission had to point out to Mr. Ghaswala that the witness was a highly placed officer and that Ghaswala was not right in ridiculing the witness by suggesting that a highly placed officer would not understand the meaning of the word ‘ continuing ’ as also understand the difference between ‘ continuous ’ and ‘ continuing ’. The witness was asked by the Commission

whether he understood the question and its significance. The witness replied in the affirmative and gave an answer to the question to the effect :—" I can, however, agree that the sinking was continuing." I have pointed out this episode to show that I always took care to protect the witnesses whenever it was necessary to do so and that in fact Ghaswala had ridiculed his own client. It is impossible to believe that a man of the standing and temper of Mr. Ghaswala would put up with such behaviour at the hands of a Judge, who was sitting as a Commission and as such had no powers, which are normally possessed by a court of law. This is not the place to mention the talks that took place between me and Mr. Ghaswala. It is sufficient to mention that Mr. Ghaswala used to see me in my chamber and also occasionally called on me at my residence and our personal relations continued to be cordial till the day when he thought fit to withdraw from the case. Even thereafter I did make attempt to iron out personal differences and remove misunderstandings, if any. It has no bearing upon the order that I have passed and the merits of the work that I was pursuing. This is a small digression. But, this has to be made here to explain the entire background which led to Mr. Ghaswala's withdrawal. I have also, in particular, to explain the allegations, which Mr. Ghaswala has now chosen to make in his written arguments.

Coming back to the prevaricated replies of Yadav, in answer to further questions by Mr. Sawant, Yadav stated (Ex. 793) :

" I also realised that the water would rise higher than the levels marked out by Mr. Maydeo during the floods of 1958. I did tell the people in the localities, where I went, that the water will rise beyond the level marked out by Maydeo and in more areas than mentioned by him."

These answers incorporate a categorical admission made by the witness. Notwithstanding this, Mr. Murudkar chose to ask the following question :—

" Q. Did it happen that either Maydeo or Neurgaonkar actually made markings on any of the maps on the 19th of July 1958 ? "

Yadav replied :

" A. I do not remember whether he did so. "

I allowed the question, because I wanted to see the reaction of the witness, after the very categorical admission he had made earlier. I have put this in the form of question and answer so that there should be no misunderstanding as to what was the question put and what answer was sought to be elicited from the witness. Evidently, the question was a leading one suggesting an answer in favour of the contention put forward by S. B. Kulkarni. Yadav went back upon the admission made by him and proceeded to say that he did not remember whether Maydeo or Neurgaonkar made markings on any map. The question and the answer thereto would throw light upon the nature of the instructions, which the witness says were given to him, by Advocate Murudkar when he called him (the witness) to his office at the Poona Club. The matter, however, did not stop there. Mr. Murudkar himself put the following further question to Yadav :—

" Q. Did you make an attempt to find out the map on which markings were made by Maydeo in 1958 ? "

The answer of the witness was "No." This question clearly implied that there was a map, on which markings were made by Maydeo in 1958. It would thus be seen that although everyone concerned was aware that Maydeo had made certain markings on a map, an attempt was made to show that no map was marked out at any time and whereas S. B. Kulkarni positively stated

that he was told by Yadav that Maydeo had never made any markings on any map, Yadav could not muster courage to make such a bold statement. He began by saying that he did not remember whether that was so but repeatedly admitted that Maydeo had made markings on a map in the Municipal Office. It is again significant that an attempt has been made by S. B. Kulkarni and Yadav to show that according to Maydeo the rise of water would only be five feet over the existing level of water and not ten feet as is deposed to by Maydeo and Bhalerao. The reason is obvious and that is to discredit the evidence of Barve, Pandit and Dhanak by showing the utter disparity between the rise of five feet and the rise of thirty feet. But, this attempt has signally failed.

The contention of Maydeo that he had made markings on a map in the Municipal Office is fully corroborated by the contents of a contemporaneous document (Ex. 395). This letter was written by Maydeo to Anand on the action taken by him on the previous day (19th July 1958). At paragraph (4) of that letter, Maydeo says :

“ After some discussion it was therefore decided that though the possibility of any damage to the dam may be remote, still, as the evening was drawing near, the Collector and the D. S. P. should be ready with a plan of action in case anything untoward happened during the night. We accordingly contacted the Municipal Engineers and *with their help marked out areas*, which might be affected by some sudden rise of water over the then water level in the river. The intention was that the Police would know where to look for trouble and where to confine their activities and where to keep the people alerted. By 6-30 p.m. the Collector and the D. S. P. had been supplied with a list of areas which may be called the possible danger zone and accordingly, I understand, the police gave a mild warning to people in the area to keep alert during the night.”

As pointed out above, Maydeo has stated that in pursuance of the wish of the then Collector and the D. S. P. he prepared a list of localities, which were likely to be visited by floods released by the possible collapse of the Khadakwasla Dam. There is a document in the Collector's file relating to the floods of 1958, which has the following heading :—

“ The houses situated within the area mentioned below are likely to be in danger due to the continued floods.”

This document was eventually marked as Ex. 408. It was shown to Maydeo, who stated as follows :—

“ My attention is invited to a document in the Collector's file under the heading ‘ The houses situated within the area mentioned below are likely to be in danger due to continued floods’. After going through the localities mentioned in the list, I say that the localities mentioned by me must be about the same as mentioned here. The floods did not rise to the expected levels because there was no actual breach in the Khadakwasla Dam.”

This statement was not challenged as incorrect in his cross-examination. On the other hand, it is elicited in his cross-examination that the then Collector and the D. S. P. were supplied by Maydeo with a list of the areas, which were likely to be affected. The document at Ex. 408 was shown to the then Collector, Mone, who says (Ex. 406) :

“ These areas (shown in the list) apparently were mentioned by Maydeo.”

He adds :

“ At 6 p.m. when I made enquiries with my office, I came to know that Mr. Maydeo had specified those areas (areas what were likely to be affected by the floods to be released by the possible breach in the Khadakwasla Dam).”

Mone further adds :

“ It (Ex. 408) must be in the hand-writing either of Mohammad Usmani, who was my P. A. or Raval, who was my Deputy Chitnis.”

He asserted that the people living in the localities mentioned in Ex. 408 were alerted from 7-30 to 9-30 p.m. through the police vans and also by the police and home guards moving on foot. The localities mentioned in the list (Ex. 408) are :

*“ Portion on the west side of Mutha River*

- (1) Karve Road, Ayurved Rasa-shala to Lakdi Bridge.
- (2) Jangli Maharaj Road-Sambhaji Chowk to Ghole Chowk.
- (3) Final Plot No. 702 to Nava Bridge (Lloyd Bridge) Road parallel to the Congress House Road.
- (4) Lloyd Bridge to Sangam Bridge via Shivaji Road and Civil Court Road.

The area between the above roads and the Mutha River.

*Portion on the east side of Mutha River*

- (1) Lakdi Bridge to Jawahar Chowk to Sadashiv Navi Peth Municipal School.
- (2) Lakdi Bridge to Shedge Vithoba on Laxmi Road to Narayan Peth Gate.
- (3) Omkareshwar Road-Narayan Peth Gate to Shanwarwada via Shanwar Peth Police Chowkey.
- (4) Lloyd Bridge along Tambat Houd Road via Pawale Chowk.
- (5) Kasba House No. 801 to Mangalwar Gadi Tal via Mangalwar Gadi Tal Road.

The area between the above roads and the Mutha River.”

Ex. 416, which is also in the same file, shows the places, which were actually affected by the floods of 1958. The distinction between Ex. 408 and Ex. 416 is quite evident because the heading of Ex. 408 clearly shows that the areas mentioned therein were the areas likely to be endangered by the continued floods, whereas Ex. 416 shows that it relates to the areas, which were actually affected by the floods. These documents are coming from the file of the Collector's Office and there can be no dispute, and there has been no dispute, about their genuineness.

The above evidence, which is good both in quality and quantity, clearly indicates that—

- (1) it was apprehended that the Khadakwasla Dam might breach,
- (2) in that water would rise 10 feet over and above the then flood level,
- (3) Maydeo, after expressing the above view, proceeded to mark out on a map in the Corporation Office, the areas likely to be affected by the floods,
- (4) He did so because the Collector insisted upon that course.
- (5) Maydeo gave a list of the areas which according to him would be affected by the floods released by the possible breach of Khadakwasla Dam. A copy of that list was lying in the Collector's file.

I cannot part with the topic about the map marked by Maydeo without referring to a fantastic argument advanced by Mr. Rege, the Counsel for the Commission, as to why Chaturvedi must be disbelieved when he said that Maydeo told them that the water would rise by 30 feet Chaturvedi admitted that the figure 30 may be wrong and in any case he was not particular about the figure, but that he was mainly interested in finding out the localities to which water might spread. I have dealt with that aspect in full and it is not

necessary to repeat the argument. All that is necessary to note is that at page 517 of his written arguments, Mr. Rege has asserted that the map marked out by Maydeo is at (Ex. 405) and this map clearly shows that Chaturvedi's figure of 30 feet cannot be accepted as true. (Ex. 405) is a map prepared on the basis of a tracing in the Corporation Office and produced before the Commission by S. B. Kulkarni with a forwarding letter (Ex. 404.) This map shows the line of the actual floods of 1958 and the original map was used by Kulkarni and Prabhakar on the 12th for estimating the level that might be reached by the floods on 12th July 1961. It is surprising that Mr. Rege should treat this map as the map on which Maydeo marked out the areas on the 19th July 1958. The written arguments advanced by Mr. Rege bristle with several inaccuracies, misstatements and half-truths. I have mentioned some of the most glaring ones from time to time in the course of the discussion in this report. It is a pity that Mr. Rege, who was devoting himself wholly to this case and was staying in Poona on most of the week ends and other holidays for the purpose of study of the case, should not have cared to go through the record carefully and rushed to conclusions on wrong basis. It is equally interesting that his explanation about the reason of Chaturvedi's figure of 30 feet is the same as offered by the Advocate for the civil authorities to which attention would be drawn hereafter.

### III. Measures taken in 1958

On the point as to the measures taken in 1958 and in particular on the 19th July 1958, when the breach of the Khadakwasla dam was apprehended, we have mainly to rely upon the evidence of S. S. Mone, the then Collector and Chaturvedi, the then D. S. P., Poona and a few contemporaneous or near contemporaneous documents to which reference would be made hereafter. Mone, the then Collector, had received no intimation about the opinion expressed by Pandit, Anand and Dhanak nor the calculations made by them. Mone's only source was Maydeo, the senior irrigation officer in Poona. Mone, in his written statement (Ex. 407) says (paragraph 5) :

"Shri Maydeo stated that as the seniormost Irrigation Engineer in Poona, he considered it his duty to sound a note of caution that the Khadakwasla dam was very old having been constructed some 60-65 years ago, that it was intended to take a column of water 34 ft. high but that danger limit had long been passed and a column of water over 37 ft. high was pressing against it, and there were no indications of the incessant rains abating. I, therefore, asked him to state in clear terms whether he meant to suggest that there was a danger of Khadakwasla dam giving way. Shri Maydeo replied that he could not state that there was any such imminent danger of Khadakwasla dam giving way, but that in view of the circumstances mentioned by him, a five per cent. possibility of such a calamity occurring could not be ruled out. He added, however, that since the possibility was only five per cent., I need not worry about it. I replied immediately that since a five per cent. possibility of such a disaster had been mentioned by a responsible irrigation Engineer like him, I could not overlook the matter and that I was bound to take such precautions as could be taken."

After discussing the matter with then Municipal Commissioner and the District Superintendent of Police, Poona, Mone convened a more broad-based meeting. The names of the officers who were called have already been mentioned above. The following decisions were taken, according to Mone, in this conference

(as referred to by him in para. 7 of his written statement Ex. 407) :—

"(1) A wireless station should be installed at the Khadakwasla dam

and a Deputy Engineer should be posted with instructions to report periodically over the police wireless system, such information as the level of water in the Khadakwasla Dam, the extent of the rains at Khadakwasla and the condition of the dam.

(2) Shri Maydeo and the officers of the Irrigation Department, in consultation with the Municipal Engineer, should indicate the areas likely to be affected in case of further serious floods to enable the Revenue and the Police authorities to alert persons living in the affected areas and to take measures for evacuation, if it became necessary.

(3) Steps should be taken to issue a general warning over the Poona Station of the All India Radio and also through the Police and Home Guards, informing the residents on the banks of the river Mutha of further unexpected rise in the level of the water during the night and advising such families from the affected areas as had friends and relations elsewhere in the city and to take shelter for the night with such friends and relations or in the Municipal Schools. . . . According to the above decision, a brief message was read out from the Poona Station of the All India Radio at about 6 p.m. by S. K. Limaye, Prant Officer, and was repeated at 7 p.m. So far as I can recall, the same message was also reported in the only evening paper called 'Sandhya'.

(4) All available police and home guards should be deployed in the areas likely to be affected by the floods to keep an allnight vigil.

(5) People should be cautioned of the danger of further floods during the night and advised to evacuate to safer areas through the means of police vans equipped with loudspeakers as well as through the police and home guards.

(6) All available buses of the Poona Municipal Transport and the State Transport, Poona Division, should be made available and should be kept in readiness at their respective Depots for use, in case large scale evacuation became necessary. The representatives of the Defence Department also agreed to make additional transport available, if necessary."

In answer to questions by Mr. Phadke, on behalf of the Citizens' Committee, Mone explained that he was making arrangements so as to prepare for the worst eventuality viz., breach of the Khadakwasla dam. In answer to questions by Mr. Murudkar, on behalf of the civil authorities, Mone stated :

"A truck was used to my knowledge for the evacuation of 20 persons who were marooned and rescued by the Bombay Engineer Group."

He added that as regards other trucks, he could not say whether they were used or not used, nor could he say off-hand how many persons were evacuated on the 19th and 20th July 1958. These are the only important answers that were elicited in his cross-examination on behalf of the civil authorities. While appreciating Mone's evidence and also the evidence of Chaturvedi as to how many trucks were used for evacuation or as to how many men were employed in respect of evacuation, it is necessary to remember that, as a matter of fact, the Khadakwasla dam did not breach and the only emergency which the authorities had to face was the emergency of heavy floods due to heavy rains. Therefore, what measures were actually taken is a matter of very little consequence. The more important question is, what arrangements were made and what measures were contemplated for meeting the emergency arising out of a possible breach of the Khadakwasla dam.

In the course of Mone's cross-examination, which took place on the 3rd April 1962, it became known that Chaturvedi was the officiating District Superintendent of Police in 1958. Thereafter, it was thought that his evidence would be of some use and, therefore, a letter was written by the Secretary of the Commission requesting him to submit a statement and agree to give evidence before the Commission. Accordingly, Chaturvedi submitted his written statement (Ex. 841) on the 18th July 1962 and he was examined on the 24th July 1962 (Ex. 840). Before submitting his written statement, Chaturvedi approached Heble, District Superintendent of Police, Poona City, and requested him to make the records of 1958 available to him. The records that were made available to him were the following :—

- (1) The log books of some of the motor transport vehicles.
- (2) One log book of the high frequency wireless set.
- (3) One Station Diary of the Faraskhana Police Station (This is in two volumes the first volume ends on the 18th of July 1958 and the second begins from the 20th July 1958. The last pages of the first volume and the front page of the second volume are missing).

Chaturvedi stated that he was more interested in Vishrambag Police Station Diary, but, that was not made available to him. He adds that his weekly diary was made available to him by the office of the Inspector-General of Police. Chaturvedi questioned the clerk from the office of the District Superintendent of Police, Poona, about the correspondence that took place between him and the then Collector and also the list of the areas (prepared by Maydeo). The clerk made a search for about two or three hours and then came and told him that these documents were not traceable in the office. Chaturvedi added that the list prepared by Maydeo was read out to the police officers and the officers must have taken down the areas that were read out on a paper and in the normal course the list ought to be found in the respective stations. The witness was severely cross-examined by Mr. Murudkar, on behalf of the civil authorities. The following are the answers elicited from Chaturvedi in his cross-examination (Ex. 840) :—

“ I went to the D. S. P. and told him the documents which I wanted. The documents referred to above were given to me and I was told by the D. S. P. as also the Inspector, Local Crime Branch, that the rest of the documents are not traceable. I wanted the Faraskhana Station Diary among other documents. I also enquired about the weekly diaries of the Faraskhana, Vishrambag and other Police Stations and I was told that these documents were probably with the Commission. I asked for the Confidential document (C-1 file). D. S. P. Heble told me that there was nothing in that document about the floods of 1958.”

At a later stage of his cross-examination, it was suggested that the station diaries fell under class 'B' category and, therefore, were destroyed within a period of two years. In answer to questions on this point, Chaturvedi stated :

“ The records in the D.S.P.'s office are classified under the three heads 'A', 'B' and 'C'. 'A' record is permanent record. The rules prescribe the life time so far as 'B' record is concerned. So far as 'C' record is concerned, the rules say that it can be destroyed after one year. Without reference to the Police Manual, I cannot say which record falls within the category 'C'. I did question the clerk of the D. S. P. in the presence of the D. S. P. the Stenographer and the head clerk, as to whether the file was destroyed and the reply was like this :

‘ Class 'B' record is destroyed after two years ’.

When I asked about the general diaries, I was told that they also fall in the category of class 'B' record and they had been destroyed. Later on, one of the

station diaries was actually found. From these replies, I could not come to any definite conclusions as to exactly what was the situation about the diaries."

No questions were asked as to what became about the correspondence file, nor is any explanation forthcoming as to what happened to that file, whether it is intact or destroyed, and if so, why was it destroyed. According to Chaturvedi, this file would contain the correspondence that took place between him and the then Collector and also some other important documents. A question was asked to him as to whether he had kept any note for the information of the successor and Chaturvedi stated that he could not say whether he had left such a note unless the correspondence file was made available to him. According to him, the note will normally be found in the correspondence file. He, however, stated that the file, which he wanted to get at from Heble would contain not only the letters written by the Collector but also the replies given by him to the Collector.

The allegations made by Chaturvedi were of a serious character and reflected upon the integrity of the District Superintendent of Police, Poona City. The Commission, therefore, wanted to ask for clarification and directed the Secretary to write a letter (Ex. 906 collectively) to Heble calling upon him to send the following documents :—

- (1) Station Diary of Vishrambag Police Station, 1958.
- (2) Station Diary of Faraskhana Police Station, 1958.
- (3) Log Books of motor vehicles used in July 1958.
- (4) V. H. F. Log Book for July 1958.

On 3rd August 1962, Heble wrote a letter to the Secretary of the Commission stating that he was forwarding the Station Diary of Faraskhana Police Station, Log Books of motor vehicles used in July 1958 and the Log Book of V.H.F. control room of the relevant date in July 1958. At the same time, he stated that he regretted that the Station Diary of Vishrambag Police Station for the relevant dates was not forthcoming. He then proceeded to offer an explanation as to how a search was made and how only the Station Diary of Faraskhana Police Station became available in the course of that search. He also stated that the Station Diary of Vishrambag Police Station was not traceable, presumably because when the Police Station was shifted from the old Faraskhana building in Budhwarpath to Vishrambagwada in March 1960, it was either lost or misplaced.

On the 10th August 1962, Heble wrote another letter (Ex. 906 collectively) stating that in the course of continued search, the Station Diary of the Vishrambag Police Station for the period from 27th June 1958 to 2nd August 1958 was traced in some old record kept in the Local Crime Intelligence Branch with which it had apparently got mixed up during the shifting of the Police Station from the old Faraskhana building to the Vishrambagwada in March 1960. The District Superintendent of Police also chose to send the duty register maintained in the Headquarters in 1958, which, he stated, was found in the course of the same search and which, he felt, might be found useful by the Commission. It may be noted that this document was not called for by the Commission.

I passed a comprehensive order (Ex. 906 collectively) on this as also the earlier letter on 11th August 1962 and it is not necessary to repeat what I have stated therein. I directed that the duty register should be returned to the District Superintendent of Police, as the same was never called for by the Commission. It is now contended in the written arguments submitted on behalf of the civil authorities that the Commission was wrong in not admitting this document. According to the advocates, on behalf of the civil authorities, this document would have thrown light upon the question as to how many policemen were called to duty at that time. It is necessary, first of all, to



remember that we are not making a detailed investigation into the steps taken in 1958 and secondly, it is obvious that the duty register of Police Headquarters alone would not throw light upon the question as to how many policemen were really called to duty on the 19th July 1958.

Chaturvedi has admitted that he was allowed inspection of the Station Diary of the Faraskhana Police Station. What, however, he complained was that, the last page of the first volume and the first page of the second volume of the diary were missing. It is noticed that the last page of the first volume ends with the entry made at 21-30 hours on the 18th July 1958 and the second volume begins from page 3 and commences with serial No. 10 on the 19th July 1958. In other words, the entries from 21-30 hours on the 18th July upto 19-00 hours on the 19th July 1958 are missing. No explanation, whatsoever, has been offered as to how this happened and why the crucial page only is missing.

As regards the Station Diary of the Vishrambag Police Station, which was forwarded by the District Superintendent of Police on the 10th August 1962 and which, according to him, was found after a sustained search, I do not understand what purpose would now be served by admitting this document on record. It was Chaturvedi, who wanted to examine that document. For whatever reasons, Chaturvedi had no opportunity of going through the entries of this diary. The Commission does not feel the need of going through the diary. Finally, it is significant to note that no explanation has been offered about the correspondence file in regard to which Chaturvedi was so keen. Chaturvedi feels that this file, apart from the letters exchanged between him and the then Collector, must also contain the note about the events of the 19th July 1958.

It is thus evident that an attempt was made to keep back certain documents from Chaturvedi and taking advantage of the opportunity offered by the Commission for clarification, Heble wants to mislead the Commission by offering documents, such as, the duty register, which was wholly irrelevant for our inquiry and which relates to the police force in the headquarters only.

In his cross-examination, Chaturvedi admitted that arrangements were made for warning and evacuation even on the 10th July 1958, but the arrangements made on the 19th July 1958 were more intensive, because it was expected that there would be a greater rise of water in the river. He asserted that arrangements were made for about fifty to sixty trucks in addition to the State Transport being requested to keep their trucks at the disposal of the police authorities. Chaturvedi states that these trucks were kept at different places. Some were kept in the Transport Depot so that they would be available to be put into action at the nearest centre of trouble. Chaturvedi added that he had also asked the Deputy Superintendent of Police to secure five or six boats of the army and that five or six boats were actually secured. Chaturvedi also stated that he had asked his policemen to keep torches with them in anticipation of the failure of the electric lights in case of the breach of the Khadakwasla dam. He had also asked the policemen to keep wireless sets ready for use to maintain communication line in anticipation of a breakdown in the telephonic connections. According to Chaturvedi, it was decided in the meeting that evacuation operations should be carried out by the Police, the Home Guards, the Army and the Municipal staff in particular. As regards warnings, Chaturvedi stated that three vehicles were used for giving warnings with the aid of loudspeakers. The Police Department had a van of its own fitted with loudspeaker. The second loudspeaker was mounted on another van and the third loudspeaker van was procured from the Regional Publicity Officer. He asserted that since he regarded this as an emergency, he gave directions to all Inspectors to mobilise all available policemen. He stated that the policemen that were available for mobilisation would vary from 1,000 to 1,500. He stated

that some policemen were put on vehicles and some were asked to go on foot from door to door and warn people. According to Chaturvedi, the then Municipal Commissioner placed the municipal vehicles at his disposal. It was suggested in the cross-examination of Chaturvedi that there were no entries in the weekly diaries of Police Inspectors of Faraskhana, Vishrambag and other Police Stations in the city of Poona relating to any action having been taken by them on the 19th July 1958. I pointed out to Mr. Murudkar that the diaries of the Police Inspectors could not be shown to the witness though it was open to him (Mr. Murudkar) to prepare extracts of those diaries, from which it can be verified whether there is any mention made in them relating to the action taken on the 19th July 1958. Mr. Murudkar has not produced these extracts. Grievance has been made about this ruling. I fail to understand how the civil authorities are in any way affected, when the Commission was prepared to accept the extracts of those diaries. According to Chaturvedi, the precautionary measures decided upon in the Collector's meeting were put on legs between 6 and 6-30 p.m. on the 19th July. He admitted that at about 4-30 p.m. on the same day, warnings about floods were already given. He stated that he had not issued any orders for evacuation of the people before 6-30 p.m. and it is possible that some policemen, on their own, might have taken some action in that respect in particular cases.

As regards evacuation, Chaturvedi stated that some people responded to the call of the Police for evacuation and some did not. He admitted that he could not give the figure of people who were evacuated, but it must be in thousands. According to him, some vehicles were used for evacuation. But, he had issued orders that vehicles should be used on a large scale in case there was breach of the Khadakwasla dam. On the question of warnings, he explained that in the beginning a mild warning was to be given saying that there was danger of heavy floods. The second warning was to be given, when there was an actual breach of the Khadakwasla dam, in which case, the police were to go round in the localities and start evacuation after necessary warnings. He explained that the authorities did not consider it wise to warn the people that there was likelihood of the breach of the Khadakwasla dam, because they felt that this would lead to panic. For this reason, the meeting decided that a mild warning should be issued first and that a wireless station should be set up at Khadakwasla for conveying the news about the rise of water level in the Khadakwasla lake from time to time. He asserted that he had himself gone round in some areas and gave warnings to some people. He also asserted that he met Shri Sri Prakasa, the then Governor of Maharashtra, who was also moving round to see for himself what was taking place.

The statement of Chaturvedi that he would be in a position to mobilise 1,500 policemen in the city has been sought to be ridiculed in the arguments advanced on behalf of the civil authorities. Chaturvedi stated that the total strength of the policemen in the city was about 2,400 in 1958. He asserted that between 6 and 6-30 p.m. on the 19th July, he gave directions calling upon the mobilisation of the entire available police force. This direction was given by him to the Police Inspectors, when he held a conference with them in the Police Headquarters. He, however, frankly admitted that he did not remember as to how many policemen were called into action on the 19th July 1958. In answer to questions by Mr. Murudkar, whether the V. H. F. control system was used on the 19th July for giving warnings, Chaturvedi replied :

“ There is V. H. F. grid. I was carrying with me a V. H. F. set, which, in other words, is called walkie-talkie. I gave quite a number of instructions on that walkie-talkie set. The instructions given on this set are more

or less like verbal instructions. No log book is maintained for V. H. F. channel. There is a high frequency channel of which there is a control room in Vishrambagwada Station. The log book of the High Frequency control room was given to me for inspection. That log book contains a lot of entries relating to 1958 floods. The instructions given by me would not be contained in that log book, because the instructions given by me were orally given to the officers themselves."

Chaturvedi has come up for a good deal of harsh, uncharitable and irresponsible comments at the hands of the lawyers on behalf of the civil authorities. Even, Collector Mone has not escaped scornful attention in these arguments. Capital, however, has been sought to be made from certain small omissions. It is pointed out that in the file relating to 1958 floods from the Collector's office, there is no document showing that the minutes of the meeting convened by the then Collector were recorded. It is argued, in all seriousness, that this omission confirms the practice deposed to by Mohite, Prabhakar and others that no minutes of such meetings are kept. It has been conveniently forgotten by the learned lawyers that no question was asked to Mone on this point and when a question was asked to Chaturvedi, he stated that he did not remember as to whether any minutes are kept. The mere fact that no minutes are found in the file of the Collector's office is no evidence that the minutes of that meeting were not prepared at all. It is too much to say that the practice deposed to by Mohite, Prabhakar and others finds confirmation merely because no document of the minutes is forthcoming from the Collector's file. It has been seriously contended that Mone has made several improvements in his statement and the evidence on the report (Ex. 419) submitted by him to the Government. Two documents of Collector Mone deserve notice. The first is Ex. 415, which is a note prepared on 21st July 1958 regarding the flood situation in Poona City and the district. The note appears to record the factual position. In the report at Ex. 419 dated 24th July 1958, at paragraph (4), Mone refers to the warning given by Maydeo in the following words :—

"The Superintending Engineer, D.I.C.(II), Poona, warned me of the seriousness of the situation and also stated that since the dam was over 65 years old and was constructed to support a column of water 34 ft., the situation created by the water rising to over 37 ft. was fraught with danger, particularly, because there was no sign of the rains abating according to the reports from Khadakwasla."

Mone has not used the words that Maydeo gave him warning that the dam would give way or was likely to give way. Mone was cross-examined by Mr. Murudkar on this point and he replied that the words used by him, particularly, the words 'fraught with danger' clearly implied that a warning was given by Maydeo that the Khadakwasla dam might give way. As stated above, the contemporaneous document (Ex. 395) which is a letter written by Maydeo to Anand on 20th July 1958 clearly speaks of the warning having been given to the then Collector about the possibility of the dam being damaged, although this was mentioned as a remote possibility. The words used in (Ex. 419) clearly indicate that the situation at the Khadakwasla dam was dangerous and the words 'fraught with danger' could only mean the breach of the Khadakwasla dam. There is, therefore, no substance in the grievance that the report (Ex. 419) does not specifically say that it was feared that the Khadakwasla dam was likely to breach. The allegation that Mone has made improvements in his written statement (Ex. 407) from the report (Ex. 419) is mainly based upon the the so-called absence of mention of the possible breach of the Khadakwasla dam in that document. The other omission, to which reference is made in the arguments is that, Mone does not

say that a list of the areas was supplied to him by Maydeo. There is abundant evidence, both documentary and oral, that Maydeo had supplied a list containing the areas to Mone and that list is actually forthcoming from the file in the Collector's office. No reason has been given as to why Mone should effect improvement upon his report and with what motive. It is this attitude of the civil authorities which I characterised sometime back as the attitude "those who are not with us are against us."

I have already pointed out that there is no substance in the attack levelled upon Chaturvedi that he attributed the statement that there would be a rise of thirty feet of water to Maydeo and it is not necessary to repeat it again. Merely because Chaturvedi used the words "the rise of thirty feet", the advocates, on behalf of the civil authorities, had jumped to the most unwarranted conclusion that this shows the anxiety and zeal of the witness in giving evidence. Chaturvedi's claim that it would be possible to mobilise 1,500 policemen from the city of Poona has been sought to be ridiculed and it is pointed out that at no time would it be possible to mobilise that much number and that the number would not exceed about eight hundred policemen. Chaturvedi has never stated that he actually mobilised that number. What was asked to him was, what number would be mobilised and he roughly stated that 1,000 to 1,500 policemen would be mobilised. Chaturvedi says that his directions to the Inspectors were that all available policemen should be mobilised. Throughout the criticism levelled against Chaturvedi, one important factor has been missed and that is that, there was no occasion to put the arrangements made in regard to mobilisation of the police force and evacuation on legs. All that is necessary to be seen about the arrangements made on the basis of the information that there was a possibility of the breach of the Khadakwasla dam is, whether warnings were given to the areas, which were far wider than the traditional lowlying areas; who participated in those warnings and who supervised them and whether arrangements for transport for evacuation and rescue were made. It is on these broad points that the Commission has taken some evidence, documentary and oral, relating to 1958 floods and it is the validity of this evidence, which had to be put to test, not with reference to what actually happened, because nothing happened after these preparations were made, but with reference to the assessment of the situation made and the steps devised on that basis. The height of absurdity has been reached with the following comments in the written arguments on behalf of the civil authorities:—

"When he (Chaturvedi) gave evidence, he was working as the Secretary of the Police Commission appointed by the Government of Maharashtra under the chairmanship of Mr. Dixit, a retired Judge of the Bombay High Court. It happens that Mr. Bakhale, the Senior Advocate on Record, is also a member of that Commission, of which Mr. Chaturvedi is the Secretary."

These sentences carry a very sinister implication viz., that Chaturvedi is under the thumb of Mr. Bakhale and that he (Chaturvedi) has been influenced by him. I have not come across a more mean-minded attack on a responsible officer of the Police Department and also on a very senior advocate, who in the past had held several important posts such as, the District Judge, City Civil Court Judge and the Director of Public Prosecutions. No reason has been shown as to why Mr. Bakhale should try to influence Chaturvedi. Again, it is a mis-statement to say that Chaturvedi has been working as the Secretary of the Police Commission. V. G. Kanetkar is the Secretary of the Police Commission and also a member. Chaturvedi is the Deputy Secretary of the Police Commission but a non-member. There are as many as eight members on the Police Commission and Mr. Bakhale happens to be one of them. Is

it possible that Mr. Bakhale would be in a position of influencing Chaturvedi merely by reason of the fact that he is one among the eight members of the Commission and Chaturvedi happens to be the Deputy Secretary? Have matters gone to such a sordid state that a person of the rank of the District Superintendent of Police would agree to give false evidence just to please one of the non-descript members of the Police Commission, who has no power nor any patronage to distribute? I am constrained to observe that a new low in forensic debate has been reached in these comments and they only reflect upon the sense of value and decency of those who have condescended to make them, and put them in writing. The matter does not rest there. We are told on behalf of the civil authorities that the evidence of Chaturvedi is :

“a bundle of falsehood, boasting and irresponsible utterances unbecoming of an officer of a status and with reference to the nature of his evidence and the manner in which he dared to make false statement on oath makes us feel that Mr. Chaturvedi would not have so dared to act on his own.”

What is exactly the insinuation in this statement? If Chaturvedi is not acting on his own, then he is acting at whose behest and for whose benefit? To characterise the evidence of Chaturvedi as a bundle of falsehood is, in the first place, irresponsible and to suggest that he is acting at the behest of some unknown person is the height of irresponsibility. The civil authorities, who have allowed such statements to be made by their advocates, deserve serious censure, and the conduct of the advocates, who agreed to act as a mouthpiece to give utterances to such irresponsible and slanderous statements, deserves to be seriously considered.

Corroboration is forthcoming to the evidence of Mone and Chaturvedi from unexpected quarters on the point that it was apprehended in 1958 that the Khadakwasla dam might give way. It should be recalled that Brig. Bedi Commander, Poona Sub-Area, attended the meeting convened by Mone. In answer to questions by the Commission's counsel, Bedi stated (Ex. 93) :

“In 1958 there were heavy floods in the month of July. I was informed by Mr. Mone, the then Collector, that the Khadakwasla dam may give in. He had asked for our assistance and so we had alerted some troops to get ready for help. At that time, there was no Panshet dam, and it was clear to me (at the time when he visited the Panshet dam on the evening of the 11th July 1961) that the gravity of danger, in case of the failure of the Panshet dam, to the safety of the Khadakwasla dam was greater now.”

In his written statement (Ex. 93A), Bedi stated as follows :—

“The situation looked extremely grave. As I knew that in the event of the Panshet dam giving way, the water stored in it would pour into the Khadakwasla reservoir and if this broke, there would be a possibility of unprecedented floods in Poona. The gravity of the situation was particularly marked by me as I had previous experience in 1958 of the water rising in the Mutha river to the danger mark. At that time, the troops had to be alerted for possible aid to the civil power.”

The question of comparison of the measures taken in 1958 with the measures adopted in 1961 must await a later stage of this discussion. In the meantime, I propose to pass on to the question about the knowledge of Mohite, Prabhakar and Heble regarding the weakness of the Khadakwasla dam; the fact of the establishment of the Khadakwasla Dam Strengthening Division; the apprehension entertained in 1958 about the Khadakwasla dam breaching and generally their knowledge about the areas to which the floods of 1958 had spread and the areas which were expected to be visited by floods in case of the breach of the Khadakwasla dam.

IV. Were the local authorities or any of them aware of the Khadakwasla dam being weak ?

In considering this question, it is necessary to remember that the file, relating to the action taken during the floods of 1958, was lying in the Collector's office. This file contained the list of the areas prepared by Maydeo and also a copy of Mone's report (Ex. 419). I have already refuted the arguments advanced on behalf of the civil authorities on the basis of absence of the use of the words, such as, "the Khadakwasla dam would give way or breach" in Ex. 419, and have shown that the words used by Mone clearly indicated that there was danger to the Khadakwasla dam. Prabhakar has frankly admitted in answer to questions by the Senior Advocate on Record (Ex. 421) :

"If I had Mone's report at Ex. 419, I would have been aware of the fact that the Khadakwasla dam was an old structure and since the water had risen beyond the designed level, the situation was serious."

Anyone who goes through the file relating to the floods of 1958 would be convinced that danger to the Khadakwasla dam was apprehended during the floods of 1958. In any case, on a perusal of this file, one would be put on enquiry as to why it was felt that there was danger to the Khadakwasla dam during the floods of 1958. That is the reason why Prabhakar and Mohite have made frantic efforts to show that they were unaware of the files of 1958 floods. I have, therefore, to consider the question as to whether the stand taken by these officers is based on truth. It is the case for the civil authorities that Desai and Khursale made reference to 1958 floods and stated that the floods, that might be released as a result of the breach of the Panshet dam, might be bigger than the floods of 1958. It is further their case that it was on this basis that they proceeded to devised precautionary measures. I will deal with the question of the measures that were decided upon in the Divisional Commissioner's meeting on the 11th July 1961 at a later stage of this discussion. For the time being, the point that I am considering is whether in view of the case put forward by them, it is likely that they would not try to find out the file that was lying in the Collector's file relating to 1958 floods. The report (Ex. 419) was sent by Mone to the Chief Minister and at that time, Prabhakar happened to be his Private Secretary. In answer to questions by Mr. Bakhale, Prabhakar stated (Ex. 421) :

"It was not aware that there were heavy floods in 1958. I cannot say when I became aware of the floods of 1958, even approximately. In 1958, I was P. S. to the Chief Minister. I do not remember whether I had read a report sent by the Collector of Poona to the Chief Minister about 1958 floods in my capacity as the P. S. The reason is that, I used to receive a number of reports and therefore it was not possible for me to remember. I have come to know of the Collector's report made in 1958 recently. I was not aware that the Chief Minister was anxious about the floods situation in Poona in 1958 and, therefore, had asked the Collector to submit a special report in regard to the same. I cannot say whether I treated the report received from the Collector of Poona as a routine document. I have no recollection with regard to that report". (The quotation is not continuous).

One can pardon for not remembering the contents of the report (Ex. 419) submitted by Mone in 1958 to the Chief Minister. But, Prabhakar's subsequent statements reveal a peculiarly complacent attitude of his mind. He admitted that the water in the Mutha river was rising from the 10th July 1961. He also admitted that he apprehended that there would be floods in Poona. Still, he did not make any inquiry in his office relating to the measures adopted by his predecessor in regard to previous floods. He asserts that even after

Desai told him about the floods of 1958, he did not try to consult the records in his office to ascertain the nature of floods of 1958 nor the measures taken during those floods. When questioned as to why he did not show even ordinary curiosity to know about the nature and extent of the floods of 1958, Prabhakar replied :

“ Since Mr. Darp, the Assistant Municipal Commissioner, who had experience of the floods of 1958 was to attend the meeting convened by the Commissioner, I thought I would get the necessary information from him. That is why I did not think it necessary to consult the records in my office.”

Prabhakar admitted that an administrator ought to rely more upon the contemporaneous record than upon the oral words of witnesses. He also admitted that Darp was not expected to have access to the record in the Collector's office. He further admitted that he had no special reason as to why he did not think it fit to consult his own record or to make inquiry as to whether anyone from his office had experience of the floods of 1958. He went on to assert that Darp must have been aware of all the measures taken by the then Collector. This was an impossible position and Darp frankly admitted that he did not know the measures adopted by the then Collector during the floods of 1958. According to Prabhakar, he called for the files of 1958 floods towards the end of August 1961, because he wanted to make a comparison of the extent of the damage that occurred in 1961 with the damage of 1958. He admitted that side by side comparing the extent of damages, he also compared the measures taken by him with the measures taken by Mone in 1958. The explanation offered by Prabhakar as to why he did not call for the files regarding the floods of 1958 on the 11th July 1961 is not only unsatisfactory but appears to me to be laboured and artificial.

That takes me to the question of Mohite's knowledge regarding the floods of 1958. In answer to questions by the Commission's counsel, Mohite made the following statement (Ex. 516). ”

“ I did not have any idea about the floods of 1958. I was in Poona in 1958. At that time, I was holding the post of the Director of Agriculture. I knew that Prabhakar was not the Collector in 1958. I was under the impression then that S. B. Kulkarni was the Collector during the relevant period. I know that S. B. Kulkarni had joined the Administrative Staff College at Hyderabad and that S. S. Mone was officiating in the month of July 1958 as the Collector of Poona ..... I had no idea of the nature and extent of the floods of 1958. In order to understand what Desai had to convey to me by saying that the floods would be greater than the floods of 1958, it was necessary first of all to understand the nature and extent of the floods of 1958. I did not ask Prabhakar whether he himself knew about the nature and extent of the floods of 1958. I did not ask Prabhakar to take out the file relating to the floods of 1958, so that he would post himself correctly about the position of the floods and also explain to me the same. My idea was to find out later on the nature and extent of the floods of 1958. In the meeting that was held in the evening, I got an idea about the nature and extent of the floods in 1958 from Mr. Darp, the Assistant Municipal Commissioner. Mr. Darp gave us the account orally. He did not refer to any file in the course of the discussion. Since Mr. Darp gave us orally a full account, I did not think it necessary to ask him or anyone else whether they had brought the relevant record. I do not know whether the Collector had brought the records of 1958 floods during the meeting. It did not occur to me that it would be more useful to refer to the files of 1958 in the Collector's office with a view to ascertain the nature and extent of the floods of that year and the measures taken to meet the danger. I am not suggesting that the name of Darp and the possibility of Darp being able to give information

about the floods of 1958 occurred to me, when Mr. Desai was telling me that the floods would be greater than the floods of 1958. I did not ask Desai about the nature and extent of the floods of 1958, nor Mr. Khursale. I did not know the level that the flood water of 1958 had reached nor the localities except that riverside localities were affected. I did not ask Desai to explain the nature and extent of the floods of 1958."

(The quotation is not continuous).

In answer to further questions, Mohite stated :

"I did not try to find out whether there was any record in my office relating to the 1958 floods. The normal practice is that if the Collector sends a report to the Government, a copy thereof is sent to the Divisional Commissioner. S. S. Mone had made a report to the Government regarding the floods of 1958. A copy of this report was sent by Mone to the Divisional Commissioner's office. I saw that report about a month ago. I had not seen the copy of Mone's report before. I was not aware in 1961 that Mone had sent a report to the Government about the floods of 1958."

When asked to state why he did not try to find out the then Collector's report, Mohite replied :

"I wanted to find out the correct situation about the floods of 1958 from the members who may bring certain files to the meeting."

Mohite admitted that till the meeting started, he did not know that S. B. Kulkarni would not attend the meeting but that Darp, Assistant Municipal Commissioner (Special) would be attending the meeting. He also admitted that he had not instructed Prabhakar to ask the District Superintendent of Police or the Municipal Commissioner to bring the files relating to the floods of 1958. According to his knowledge, till the starting of the meeting, S. B. Kulkarni was the only person who was acquainted with the floods of 1958. Mohite admitted that he felt that Prabhakar might bring some files or bring some of his assistants. He also expected the same thing to be done by the District Superintendent of Police. He admitted that he made no enquiries with any of the members assembled as to whether any of them had got the files relating to the floods of 1958. Mohite further admitted that he did not ask Prabhakar to find out whether there was any record about the floods of 1958. He also admitted that he did not suggest to Prabhakar that the officers, who were acquainted with 1958 situation, should be asked to attend the meeting. He further admitted that Darp gave an account of the nature and extent of the floods of 1958 on the basis of his memory and without reference to any file. In view of the replies given by Prabhakar and Mohite and also in view of the fact that no questions were asked to Desai about the nature and extent of the floods of 1958, although the latter told them that the floods consequent upon the breach of the Panshet dam would be higher than the floods of 1958, it appears to me clear that both Mohite and Prabhakar or either of them were aware about the nature and extent of the floods of 1958. It is further difficult to believe Prabhakar when he says that he did not try to take out the files of the floods of 1958, although there was real need of those files both for ascertaining the extent of the floods of 1958 and also for the purpose of ascertaining the measures adopted during those floods. From 1-30 to 6-30 p.m. on the 11th July 1961, when the Divisional Commissioner's meeting assembled in the Council Hall to devise ways and means for meeting the flood emergency Prabhakar would certainly have taken those files after Mohite informed him at 4 p.m. that a meeting should be convened for devising measures to meet the flood situation. I am, therefore, inclined to the view that these authorities are pretending ignorance about the files relating to the floods of 1958, because once they admit that they had looked into those files, knowledge not only



in regard to the extent of the floods of 1958 and the measures taken therein but also knowledge about the fundamental weakness of the Khadakwasla dam and the fear that was then entertained about its breach would be clearly brought home to them. It is impossible to imagine that Prabhakar and Mohite and in particular, Mohite, who is an experienced officer, would rely on the account that might possibly be given by the municipal authorities. According to Mohite, S. B. Kulkarni was the Collector of Poona during the floods of 1958. He did not know that Darp, Assistant Municipal Commissioner (Special), who had participated in the measures taken during the floods of 1958, would attend the meeting. He expected that S. B. Kulkarni, the present Municipal Commissioner would attend the meeting. It is difficult to believe how S. B. Kulkarni would give an account of the measures taken during the floods of 1958 without the Collector's files. If he knew anything, he knew about the floods of 1958 as the Collector of Poona. (Of course, according to the supposition of Mohite). Mohite would not have failed to suggest to the Collector that the files of 1958 should be taken out and placed before the Divisional Commissioner's meeting. This was all the more necessary when comparison was made by Desai himself between the floods of 1958 and the possible floods of 1961. Mohite must already have been aware, at least in a general way, about the nature and extent of the floods of 1958 and this alone accounts for this not questioning Desai on the point, when the latter said that the floods of 1961 would be higher than the floods of 1958. It was put to Mohite specifically that it would be futile on his part to think of taking precautionary measures on the basis of two unknown factors viz., the extent of the floods of 1958 and the possible floods of 1961. He, however, tried to explain by saying :

" My idea was to gather information about the floods of 1958 from other sources and, therefore, it cannot be said that our conversation with Desai and Khursale was futile."

The expression ' from other sources ' is important and would evidently indicate the files in the Collector's office. Considering the question from any point of view, the conclusion becomes irresistible viz., that Mohite and Prabhakar must have a general idea about the nature and extent of the floods of 1958 and that they must have referred to the files of 1958 before they attended the meeting held in the Council Hall at about 6-30 p.m. on the 11th July 1961.

Assuming the neither Prabhakar nor Mohite cared to look into the files relating to the floods of 1958 in the Collector's office, in view of the usefulness and necessity of having a look at those files, as discussed above, these officers must be regarded as having been guilty of carelessness and indifference in not making reference to such vital files.

As regards the knowledge of these officers about the weakness of the Khadakwasla dam and about the apprehension felt in 1958 that it might collapse, it is true that no written communication was sent to the then Collector from Bombay about the discussions that took place between Barve on one side and Pandit, Anand and Dhanak on the other. According to Mone, the then Divisional Commissioner, G. L. Sheth, was closeted with the then Chief Secretary, when Mone informed the latter about the warning given to him by Mayo. Sheth also was informed by Mone about this warning. It appears from Mone's written statement (Ex. 407) that there might have been a talk between the then Chief Secretary and Barve in this matter. Whatever that may be, it seems clear that the then Divisional Commissioner, Sheth, was apprised of the apprehension then expressed about the possibility of the breach of the Khadakwasla dam. It is not possible to ascertain whether Sheth had kept any note in regard to what he learnt in Bombay during

the floods of 1958. Whatever that may be, it is somewhat difficult to believe that Mohite, who is a successor and who was in Poona in 1958, did not come to know anything about the position of the Khadakwasla dam and the apprehension felt about its safety in 1958. It must have been a talk in the official circles in Poona that during the floods of 1958, an apprehension was felt that the Khadakwasla dam was likely to breach.

I have already referred to the fact that when the Khadakwasla project of 1957 adumbrated the plans for strengthening of the Khadakwasla dam, a new urgency was given to that subject, as a result of the experience during the floods of 1958. A new division was established with headquarters at Poona for strengthening the Khadakwasla dam. The Resolution dated 14th October 1960 is at Ex. 441. Copies of that Resolution were sent to the Commissioner, Poona Division, Poona ; the Collector, Poona ; the Director of Publicity and some other officers. Prabhakar, however, had the audacity to say that he was still unaware of the existence of the Khadakwasla Dam Strengthening Division. Can anyone seriously urge that Prabhakar's above statement should be accepted as true ? Prabhakar must have read the Resolution (Ex. 441), a copy of which was sent to him. Apart from the Resolution coming to Prabhakar's notice, it is difficult to imagine that when a Division is established in Poona, the Collector would not come to know about its existence. The matter does not rest there. The Government of Maharashtra issued a circular (Ex. 448), dated the 17th August 1960 drawing attention to the Government Circular, dated the 1st October 1958 giving instructions to the divisional Commissioner and the Collector for watching the progress of plan expenditure at Divisional and District level on a quarterly basis and requesting the Divisional Commissioners to forward to the Finance Department immediately a report for the quarter ending June 1960 in the revised *pro forma* in respect of plan schedule pertaining to the respective Divisions and also asking for subsequent reports. This circular also referred to another circular letter issued on the 11th September 1959 regarding the holding of co-ordination meeting and maintenance of plan progress. In answer to questions by Mr. Gokhale, on behalf of the irrigation officers, Prabhakar admitted (Ex. 421):

“Quarterly reports are required to be sent to me as the Collector in regard to the progress of plan schemes in the District. These reports come to me along with the review by the District Statistical Officer. I used to receive reports about the Khadakwasla Dam Project. I have not dealt with any question relating to the Khadakwasla project in the co-ordination meeting. I have seen the Government publication under the title ‘Second Five Year Plan, Bombay State’. As Collector, I was required to submit Financial Progress Reports quarterly regarding plan schemes in the District. It may be that physical target reports are also required to be sent every three months.”

Prabhakar has admitted that he used to receive reports about the Khadakwasla Dam project, but still pretends ignorance that these reports included the progress about the Khadakwasla Dam Strengthening Division. His attention was drawn to the letter (Ex. 444) written by him on the 15th May 1961 to Bhalerao, Executive Engineer, Khadakwasla Dam Division. In that letter, he stated that the District Statistical Officer, Poona had pointed out to him (Prabhakar) that the Annual Plan Report for the year 1960-61 had not been received from Bhalerao's office. He then proceeded to say in that letter :

“As already requested in the special co-ordination meeting for watching the progress of Plan schemes held on 28th March 1961, I would earnestly

request you to pay personal attention and see that the report is sent to the District Statistical Officer, Poona by 20th May 1961 at the latest."

It appears from the above that a special co-ordination meeting was held for watching the progress of Plan schemes on 28th March 1961 and in that meeting Prabhakar had requested Bhalerao to pay personal attention and see that the Annual Plan Report was sent to the District Statistical Officer, Poona. Are we still to imagine that Prabhakar was unaware that strengthening of the Khadakwasla dam was an item included in the Khadakwasla project? It is necessary to remember that this is not a letter sent by the Collector's office, but, is a D. O. letter sent by Prabhakar himself under his own signature. It further refers to the personal request made by the Collector to Bhalerao at the time of the special co-ordination meeting. Notwithstanding the clear statements contained in the letter (Ex. 444) Prabhakar says that he had addressed similar letters to other officers. His attention was drawn to the original letter in the file and yet he says :

"I still maintain that this letter (Ex. 444) was written in a routine way and in the same form as the other letters."

The information asked for by Prabhakar by Ex. 444 was sent by Bhalerao with a forwarding letter, which is at Ex. 445, dated 16th June 1961. The statement containing information which was forwarded along with that letter is at Ex. 446. There are only three items in this statement (Ex. 446) and the third item, relates to strengthening of the existing Khadakwasla dam. This letter along with that statement is addressed to the Collector, Poona. Is it reasonable to suppose that a statement containing only three items did not attract the attention of Collector Prabhakar? If it did not, then again it means that the Collector was careless in the discharge of his duties. When his attention was drawn to these two documents, all that Prabhakar stated was that the letter and the statement appeared to have been forwarded to him. Ex. 447 is a statement 'B', which relates to the 'Physical Progress of Schemes in the First and Second Five-Year Plans in Poona District'. This statement was also forwarded to Prabhakar along with Ex. 445. The statement at Ex. 447 also refers to strengthening of the existing Khadakwasla dam. The remark made against this item in Ex. 447 is, 'Preliminary work completed'. In the column of 'General remarks' in Ex. 447, it is stated 'Not finalised'. Prabhakar was closely cross-examined with reference to these documents. His replies were :

"As far as I remember, I have not seen these statements (Exs. 446 and 447). These statements were never submitted to me as far as I remember. It is the duty of the District Statistical Officer to compile a review and submit it to the Collector. The original statements are never submitted to the Collector. I again say that, as far as I remember, these statements, Exs. 446 and 447, were not submitted to me."

It is not possible to accept these evasive statements. As pointed out above, these statements were directly sent to the Collector at the special request made by him. The District Statistical Officer may be compiling a review and may be submitting it to the Collector. But, that is neither here nor there. It may be that he does not submit the original statements to the Collector. But that is also beside the point. In the present case, the reports (statements) were submitted to the Collector by the Executive Engineer, Khadakwasla Dam Division, at the express request by the Collector. No explanation has been offered on this substantial point and it has simply been ignored. Prabhakar's attention was drawn to the Circular issued by the Government of Maharashtra, Finance Department, dated 17th August 1960 (Ex. 448), which asked the Collector and the Divisional Commissioner to watch the plan

progress and hold quarterly co-ordination meetings. He admitted that the Superintending Engineer used to submit quarterly progress report to the Chief Engineer and copies of this used to be sent to the Collector and the Divisional Commissioner. His attention was invited to one such progress report sent on 20th February 1961 along with a letter (Ex. 449). The report is at Ex. 450. This report was submitted by the Superintending Engineer, D. I. C. (II) to the Chief Engineer (IP), and the endorsement on Ex. 449 shows that copies of the report have been forwarded to the Divisional Commissioner, Poona, the Collector of Poona and the Director of Publicity, Bombay, for information. The letter (Ex. 449) specifically makes mention of the Khadakwasla Dam Strengthening Division. Ex. 450 was also shown to Prabhakar. It also included the plan for strengthening the existing Khadakwasla dam and the remark made against the same is as follows :

“ The work of drilling is in progress and which is given above at Serial No. 12, Col. 8. ”

Ex. 451 is also an extract about Khadakwasla Dam Strengthening Division and states as follows :—

“ Investigation data is being collected. Estimate for M. R. costing Rs. 13.00 lakhs is sanctioned. Estimates for (I) works costing Rs. 1.00 crore has since been submitted by Central Designs Organization to the Chief Engineer (I. P.) and Irrigation and Power Department, Bombay, for sanction.”

When Prabhakar was confronted with these documents, all that he could say was that, he did not remember to have read these reports nor did he remember whether these reports were discussed in any of the co-ordination meetings. He admitted that during his tenure as Collector, two co-ordination meetings were held — one was in November 1960 and the other at the end of March 1961. He then proceeded to add that in none of the co-ordination meetings, these reports at Exs. 449 to 451 were raised for consideration. He began by saying that he did not remember whether these reports were discussed in any of the co-ordination meetings and ended by asserting that these were not discussed at all.

In the face of this overwhelming documentary evidence, it is not possible to believe that the Collector was unaware of the fact that the Khadakwasla Dam Strengthening was set up and was carrying on its work with its headquarters at Poona. It has been argued on behalf of the civil authorities that neither the Government Resolution (Ex. 441) nor any of the above reports mentioned that the Khadakwasla dam was a weak dam. This is, evidently splitting the hair. Once it is established that a Division for strengthening the Khadakwasla dam had been set up, any one, with ordinary commonsense would ask the question as to why the dam required to be strengthened when, apparently, it was a solid masonry dam. Anyone embarking upon such an enquiry would necessarily come to know that the dam required to be strengthened, because it was a weak dam. On most of the points, the civil authorities have adopted a negative stand and thus have brought themselves in conflict not only with the irrigation officers but with the military officers and also the police officers such as District Superintendent of Police Chaturvedi and Home Inspector Joshi. It was with reference to such a negative attitude that I once remarked that the defence set up on behalf of the civil authorities consists of a bundle of negatives. That remark does not suggest that the stand taken by them was untrue nor that I had made up my mind at that stage that the stand was false. All that the remark means is that the civil authorities are sitting on the fence and asking the Commission to prove everything, as if this is a criminal case, and the burden lay on the Commission to prove that the action

taken by the civil authorities was inadequate. It was the duty of the civil authorities to help the Commission in finding out whether the action taken was adequate or not, and for enabling the Commission to do so, the civil authorities would have been better advised, if they had taken a more constructive and co-operative attitude.

Most of the comments made above would apply to Mohite, the Divisional Commissioner, because during the relevant period, he happened to be the Divisional Commissioner and, as such, must have had occasion to peruse the documents and reports detailed above.

Unfortunately, the Commission's counsel has joined hands with the civil authorities on the point that notice cannot be fixed upon the Commissioner and the Collector about the weakness of the Khadakwasla dam, by referring to the documents mentioned above. In this connection, he has used the expression 'constructive notice'. The Commission's counsel appears to have been obsessed by legal technicalities and is proceeding on the footing that this Commission is discussing the question of fixing legal liability upon these officers. The question we are discussing is not a question of sufficiency of the notice, actual or constructive, but the question is of broad commonsense and that question is, whether, as highly placed administrative officers, they would come to know or, with exercise of ordinary diligence, would have come to know that the Khadakwasla dam was weak and that a Division had been established for strengthening the said dam.

An opportunity was provided to Mohite to explain whether he was not aware of the weakness of the Khadakwasla dam on the 11th July 1961. In answer to questions, he stated (Ex. 516) :

"I was not aware on the 11th that the Khadakwasla dam was weak and required to be strengthened. Nor was I aware that a special division was set up known as Khadakwasla Dam Strengthening Division with its headquarters at Poona. I did not visit Khadakwasla dam during my regime as the Commissioner. Copy of the resolution at Ex. 441 was sent to my office. I had, however, no occasion to read that resolution. The resolution was never put up to me. The Government Circular at Ex. 448 was also received in my office. I cannot say whether this document was put up to me or whether I had seen it. According to the circular, the Divisional Commissioner was asked to watch the progress of plan expenditure at Divisional and District level on a quarterly basis. The quarterly reports, similar to Ex. 449, are received in my office. Ex. 450 (which is an annexure to Ex. 449) must have also been received in my office. Exs. 449 and 450 were never put up before me. I do not know whether Mr. Ukidave was in charge of the Khadakwasla Dam Strengthening Division. I do not know Mr. Ukidave at all."

(The quotation is not continuous.)

For the reasons stated above, I feel no hesitation in rejecting these statements made by Mohite.

It would be somewhat interesting to contrast the attitude of well-informed citizens like J. S. Tilak and Dr. N. B. Parulekar to that of the civil authorities about the condition of the Khadakwasla dam. In answer to questions by Mr. Bhandare, J. S. Tilak says :

"When I learnt that there was danger to the Panshet dam, as a result of the rising water on the night of the 11th, I could realise that the Khadakwasla dam also was in danger. During the course of discussion in the Assembly as to whether the Khadakwasla dam should be raised in height

or other repairs done to it, the fact that the Khadakwasla dam was a weak dam was highlighted."

In answer to Counsel Rege's questions, Tilak added :

"I may also point out that in the news-item published in 'Kesari' dated 11th July, it has been emphasized that there was danger to the Khadakwasla dam. I produce the issue (Ex. 898)."

Dr. Parulekar, in answer to questions by Mr. Phadke, says :

"When I heard about the breach of the Panshet dam, I did have a feeling that the Khadakwasla dam would also breach..... In spite of my faith in the strength of the Khadakwasla dam, I felt that if the Panshet dam breached and the water from there rushed in the Khadakwasla dam, the Khadakwasla dam would not stand that pressure."

Is it reasonable to suppose that highly placed officers did not know what citizens who had no access to official records, could know ?

Before proceeding further, I may summarise the conclusions reached by me in the above paragraphs relating to the floods of 1958 as follows :—

(1) Mohite and Prabhakar must have known, at least in a general way, the nature and extent of the floods of 1958.

(2) Without such general knowledge, Mohite and Prabhakar would not have remained contented on hearing the statement from Desai that the floods would be bigger than the floods of 1958. The statement that the floods would be bigger than the floods of 1958 would make no sense to one who is not familiar with the nature and extent of the floods of 1958.

(3) If Mohite and Prabhakar had not known anything about the floods of 1958, they would at least have consulted the files of 1958 floods in the Collector's office. There was ample time for doing so, and I am inclined to the view that they must have referred to the files of 1958 floods.

(4) Assuming that they had no knowledge of the floods of 1958 and assuming further that they did not refer to the files of 1958, it is clear that they were negligent in the performance of their duties, or, at any rate, they were dealing with the matter in a cavalier fashion. Mohite's contention that his idea was to gather information about the floods of 1958, in the course of the Divisional Commissioner's meeting, is an afterthought. Neither he nor Prabhakar had invited the Assistant Municipal Commissioner, Darp, who had done some work during the floods of 1958 to the Commissioner's meeting. It was S. B. Kulkarni, Municipal Commissioner, who was invited to the meeting. Mohite was under the impression that S. B. Kulkarni was the Collector of Poona during the floods of 1958. Still, it is significant that Mohite did not ask Prabhakar to bring the files of the floods of 1958 from his office with a view to refresh Kulkarni's memory. Till the time the meeting actually started, Mohite did not know that Kulkarni was not to attend. Prabhakar came to know from Kulkarni at 4 p.m. that he (Kulkarni) himself was not in a position to attend the meeting, because of the meeting of the Municipal Corporation, which was to be held in the evening and that he (Kulkarni) would depute Darp, Assistant Municipal Commissioner (Special) to attend the meeting for him. I am reluctant to accept Mohite's statement that he was under the impression, till the start of the meeting, that Kulkarni was the Collector of Poona during the floods of 1958. At least, Prabhakar ought to have known that Kulkarni had joined the Administrative Staff College, and that Mone was officiating for him (Kulkarni) during the relevant period. Having come to know that Kulkarni would not attend the meeting but that Darp would attend the same, Prabhakar would at least have asked Darp to bring the municipal files, if any, relating to the floods of 1958.

(5) There was ample time for Prabhakar to collect files relating to the floods of 1958 from his office, at any rate, after it was decided that a meeting was to take place.

(6) The case viz., that the files of 1958 floods were not looked into, has been made out to avoid knowledge about the apprehension that was felt during the floods of 1958 regarding the breach of the Khadakwasla dam. The other object in putting up such a case was also to deny all knowledge about the weakness of the Khadakwasla dam. It is true that there is no document in the file, which specifically says that the Khadakwasla dam was weak. But, it is clear from Mone's report (Ex. 419) that the situation created by the rise of water to a height of 37 ft. was fraught with danger to the Khadakwasla dam.

## SECTION 11.

WHAT WAS DONE BY MOHITE, DIVISIONAL COMMISSIONER AND PRABHAKAR, COLLECTOR, BETWEEN 1-30 AND 4 P.M. ON THE 11TH JULY 1961 ?

After discussions with the engineers on the morning of the 11th July 1961, Prabhakar went to his office and attended his usual duties. Mohite also appears to have done the same thing. But, somehow or the other, at 4 p.m. an idea struck Mohite's mind viz., that an emergency meeting should be called to devise ways and means for meeting the emergency. Mohite, therefore, informed Prabhakar that the latter should send invitations to the District Superintendent of Police and the Municipal Commissioner to attend the said meeting. Even after hearing the news that a portion of the Panshet dam was subsiding creating an imminent danger to the dam, Prabhakar did not take any action till 4 p.m. He did not even inform the District Superintendent of Police or the Regional Publicity Officer or the members of the press or the representatives of the people or even the Municipal Commissioner or the Mayor of the Corporation. It is clear that Prabhakar would still have remained in slumbers in case Mohite had not asked him to convene an emergency meeting. How is this masterly inactivity to be explained ? Was it due to complacency ? Was it due to bureaucratic indifference ? Was it due to want of experience or was it due to the fear of the bureaucrat of doing something which may create panic in the minds of the people ? If Prabhakar's inaction is justifiable, then Mohite's interference, though it came late than it ought to have come, must be deemed as unwarranted. When everything was all right, why should Mohite wake himself up, at any rate, at 4 p.m. to plan an emergency meeting to devise ways and means for meeting the flood situation. If Mohite did not feel the necessity of convening an emergency meeting at the time of his interview with the engineers, how is it that an idea of doing so struck him at 4 p.m. ? Can it be regarded as a brain-wave or an inspiration ? These are questions to which no answer has been attempted on behalf of the civil authorities. If the situation was urgent, it did not become urgent suddenly at 4 p.m. on the 11th July. It had already become urgent, when there was a talk between Mohite and Prabhakar on one side and the engineers on the other. Why did Mohite not lift his little finger for doing something in the matter till 4 p.m. ? Every moment was important, and unless it was Mohite's view that time must be caught by the forelock, it was not necessary for him to think of a meeting even at 4 p.m. After all, the meeting, which was the result of a belated awakening of Mohite's intelligence, came off only at 6-30 p.m. Why were two hours and thirty minutes allowed to elapse between Mohite's decision to convene a meeting and the actual taking place of the meeting ? After all, only two authorities were to be invited to the meeting, viz., the Municipal Commissioner and the District Superintendent of Police. It was not difficult for the District Superintendent of Police nor the Municipal Commissioner to attend the meeting immediately at 4 or 4-15 or 4-30 p.m. As a matter of fact, if Prabhakar had asked S. B. Kulkarni to go to him or the Divisional Commissioner for the meeting immediately, he had no excuse to put forward particularly when Kulkarni mentioned his difficulty of being unable to attend the meeting and Prabhakar, in consultation with Mohite, should have arranged the meeting immediately after 4 p.m. or soon after 4 p.m. I can understand the delay in holding the meeting till 6-30 p.m. if the meeting was to be attended by certain prominent citizens or the Mayor of the Corporation or the Sub-area Commander or the Head of the Home Guards. It might not have been possible for these persons to attend the meeting at a moment's notice. It would have become necessary



to give them a reasonable notice and some breathing space for preparing to attend the meeting. The leisurely way in which things were moving is a clear indication of the fact that the civil authorities had not awakened themselves to the gravity of the situation. Even according to the case put forward by them, there was danger to the Panshet dam during night time. This aspect will be considered in detail in the subsequent paragraphs. But, if there was danger to the Panshet dam during night time, was it not the duty of the civil authorities to act promptly and to prepare themselves to meet the eventuality in the night? It would have been quite possible for the Collector and the Divisional Commissioner to have held the meeting even at 2 p.m. after the departure of the two engineers for Panshet, because, after all, they had only to call two authorities viz., the District Superintendent of Police and the Municipal Commissioner. Prabhakar did not comprehend the situation, probably, due to his immaturity and want of experience. It is equally possible that both he and Mohite, as hide-bound bureaucrats, attached greater importance to trying to avoid to create any panic in the minds of the citizens. This theory of avoiding creating panic appears to have obsessed the minds of the officers. Even Heble has tried to explain, as will be shown later, that he did not think of mentioning the words that "the dam stood the danger of breaching" because he felt that by the use of such language, there would be greater panic than by the use of the words that "there was danger to the dam, upto a limit" the theory that, as far as possible, the administrators should avoid doing things, which would create panic or a stampede in the minds of the people, should hold good. But, to cling on to any such fetish, after the limit is reached, is to put people into the grip of the real danger. It is always better to create panic among the people than to put them to face a real and live danger. It is not for me to hold a psycho-analysis into the working of the minds of these administrators and try to rationalise an irrationality. Suffice it to point out that no explanation has even been attempted regarding the inaction of Prabhakar from 2 to 4 p.m. (and this would have extended indefinitely but for Mohite's intervention) and of Mohite from 2 to 4 p.m. It is no use in trying to lay blame at the irrigation officers by saying that they were hopeful of saving the dam, if the help of the army was given to them. That does not explain the inactivity of these highly placed authorities from 2 to 4 p.m. and their sudden spurt of activity after 4 p.m. or rather after 6-30 p.m. The civil authorities have landed themselves on the horns of the dilemma by the stand that they have taken viz., that the irrigation authorities were hopeful of saving the dam, and yet, at 6-30 p.m., they started discussing precautionary measures to be taken on the footing that the dam might breach. One cannot eat the cake and also have it. The inherent contradiction in the stand taken on behalf of the civil authorities is so glaring that it requires no further argumentation.

## SECTION 12

WHAT WERE S. B. KULKARNI, MUNICIPAL COMMISSIONER AND HEBLE, DISTRICT SUPERINTENDENT OF POLICE DOING IN THE AFTERNOON TILL ONE OF THEM, VIZ., HEBLE, ATTENDED THE EMERGENCY MEETING AT 6-30 P.M. ON THE 11TH JULY 1961 IN THE DIVISIONAL COMMISSIONER'S OFFICE ?

Turning to Heble first, Heble has pretended ignorance of the developments at Panshet till 3 p.m. on the 11th July. He has gone to the length of saying that it was from the report in a morning paper of the 11th July that he gathered, for the first time, that the Panshet dam was an earthen dam. He has denied that he was made aware of the substance of Bhalerao's message contained in Ex. 375 (1) stating that the Panshet dam was in danger and that heavy floods were expected. Once we come to the conclusion that the Collector informed the Home Inspector, Rural, about the substance of the message (Ex. 375/1), it must follow, as a logical corollary, that he must also have informed the District Superintendent of Police in regard to the same. Assuming that the Collector did not inform the District Superintendent of Police, Poona City, it is necessary to remember that the W. T. Headquarters of the wireless in Poona are situated at the Bhamburda Headquarters. It is also necessary to remember that the R. T. Headquarters are situated at Vishrambagwada and, as is clear now from the report of Sawant (Ex. 1249/17), the grid being the same, it would directly receive messages from Khadakwasla. Sawant, in his report, has clearly stated that he was directly receiving messages from Khadakwasla and has in fact stated in his report about the receipt of the message of the Panshet breach directly from the Khadakwasla wireless station. In view of this circumstance, it is difficult to believe that the operator who received the important message (Ex. 375/1) would fail to inform the District Superintendent of Police about the same. There is an important indication in the document submitted on behalf of the Police themselves that Home Inspector Kekre had information on the morning of the 11th July about the serious conditions at Panshet. Heble's attention was drawn to the opening paragraph in the report (Ex. 556) submitted by Inspector Jadhav of the Paraskhana Police Station to the District Superintendent of Police, Poona City, on 1st August 1961, which reads thus :

"With reference to the above subject (work done by police personnel on flood day and onward) I submit that on 11th July 1961 at 06.45 hours, information was received from H. P. I. to the effect that due to heavy rains, Panshet dam is overflowing and that water is being released through safety gates due to which the river passing through Poona may overflow. As such, all available men of police station be kept in readiness at their chowkies. On receiving this information, the D. O. had instructed all the P. S. Is. to keep their staff present at their chowkies and accordingly they had complied with instructions. I had also checked all the chowkies and found all available staff present at the chokies."

Heble says that he did not come to know anything about this information from Kekre in the morning of the 11th July 1961. He adds that he did not learn from Kekre that the latter had taken steps to alert all the Police Stations on the river side. Kekre was cross-examined on this point by Mr. Phadke, on behalf of the Citizens' Committee, and his replies are (Ex. 871) :

"It is not true that police officers in the city were aware on the morning of the 11th that the situation of the Panshet dam was serious. On the morning of the 11th, I had information to the effect that due to heavy rain, the waste weir channel was over-flowing and that water was being released through regular gates conduit. I conveyed this information to Inspectors Jadhav, Risaldar and Deccan Gymkhana Police Station. I did not give

information to Inspector Jadhav that due to heavy rains, Panshet dam was overflowing and water was being released through safety gates due to which the river passing through Poona might overflow. By attention is invited to the above statement contained in Jadhav's report at Ex. 556. I maintain that Jadhav had written wrong words about the information I gave."

Having realised the implications of the information given by him, Kekre is making a frantic effort to wriggle out of the obvious implications. He is now trying to make it appear that he told Inspector Jadhav that the waste weir channel of the Panshet dam was overflowing. According to Jadhav's report (Ex. 556), the words used by Jadhav are : "Panshet dam is overflowing". It is significant to note that words carrying the same import were used in the 'Jahir Suchana' (Ex. 427), which was dictated by Heble and taken down by Kekre. It is impossible to believe that Jadhav would not understand the distinction between the waste weir channel overflowing and the dam overflowing. In my opinion, the words contained in Jadhav's report (Ex. 556) convey the idea that the dam was in danger the idea which was embodied by Bhalerao in his message (Ex. 375/1). The matter does not stop at this verbal jugglery. It is clear that Kekre had taken a very serious view of the situation at Panshet, because he had instructed Inspector Jadhav to keep all available men of the Police Station at their respective chowkies ready. Jadhav has attributed these words to Home Inspector Kekre. Such an extreme step would not have been advised by Home Inspector Kekre, had he (Kekre) not felt that there was danger to the Panshet dam. Jadhav (in Ex. 556) has explained that the D. O. instructed all the Police Sub-Inspectors to keep their staff present at the respective chowkies. He has also stated that these instructions were complied with, because he had himself checked all the chowkies and found all the available men present at the respective chowkies. Incidentally, it may be pointed out that District Superintendent of Police, Chaturvedi has been sought to be pooh-poohed for his statement that he had asked all the available men in all the Police Stations to keep themselves in readiness to meet the flood emergency in 1958. How natural Chaturvedi's reaction was is clear from the reaction of Home Inspector Kekre, who also asked the Inspectors in charge of the Police Stations to see that all available men were kept in readiness in the respective chowkies. If Home Inspector Kekre came to know about the substance of the message (Ex. 375/1) and if he gave information to the Inspectors, then it is impossible to imagine that he would not inform his own District Superintendent of Police about the same. Notwithstanding this evidence, Heble tells us that he was ignorant till 3 p.m. on the 11th July about the troubles at Panshet. Now, let us consider the manner in which Heble is supposed to have come to know about the troubles growing at Panshet. Heble, in his deposition (Ex. 535), says :

"It was at 3 p.m. on the 11th that I learnt that there was something wrong about the Panshet dam, for the first time, when someone rang me up to tell that 200 army Jawans were sent to the Panshet."

When asked to state whether the informant was a private citizen of a Government servant and what the name of that informant was, Heble says :

"Some person holding an official position had given me that information. I do not recollect his name or his rank nor can I remember to which department he belonged."

When further questioned on the point as to why he did not try to contact the informant immediately, Heble says :

"I did not ask the person who telephoned to me why 200 military Jawans were sent to Panshet. The informant told me that the portion of the

Panshet dam had already sunk. I did not try to ascertain the correct position either from the Collector or from the irrigation officer till about 3-15 p.m. I did consider that the news was disquieting and serious."

He then proceeded to explain that at 3-15 p.m., he could not contact the Collector, because the latter was busy in hearing revenue appeals. As regards irrigation officers, Heble says that he did not think it necessary to ring up any of the irrigation officers for ascertaining the correct position. At the same time, he wants us to believe that he accepted the news conveyed to him by the anonymous official as correct. The matter does not rest there. Heble proceeded to take serious action on the basis of this news. At the time, when he received the news on the phone, he was in the midst of meeting with the Sub-Divisional Police Officers. He disclosed the news to them and it was at that time that Shiveshwarkar, Deputy Superintendent of Police, Prohibition Task Force, told him that he (Shiveshwarkar) had attended to the work during the floods of 1958. Heble then called the Home Inspector Kekre and asked him to alert riverside Police Stations, so that they would move into action if the necessity arose. Heble admitted that none of the police officers present in the meeting was taken by surprise by the announcement of the news about the danger to the Panshet dam, although none of them was aware of it till then. When asked to state as to how he proceeded to take action on the basis of the news, without verifying its correctness, Heble says (Ex. 535) :

"I did not think it necessary to verify the correctness of the news before alerting the various Police Stations, because I felt that although the news might turn out to be false, there would be no harm in giving alerts."

In giving this reply, Heble has conveniently forgotten the familiar theory of avoiding creating panic. Heble adds that he also took some other steps besides alerting the Police Stations and one of them was to call for records of the floods of 1958. Heble had brought the records relating to the floods of 1958 with him at the time of his deposition and he was asked to produce the same, which he did, but stated that two or three documents contained in the file were of a confidential nature. Heble also stated that he tried to get the idea of the measures taken in 1958 from Shiveshwarkar, who told him that the situation was handled on an *ad hoc* basis with the help of some policemen from the local Police Stations and some policemen from the Police Headquarters. On being asked by Heble, Shiveshwarkar said that there were no written instructions or any scheme drawn up in 1958 and added that he could not give any further details about the action taken in 1958. The mysterious happening of the anonymous messenger conveying vital pieces of news to the officers at the most psychological juncture has taken place more than once in the present case. At 3-00 p.m. on the 11th July, an anonymous person, whom Heble calls an official and whose name he did not remember, obliged Heble by giving him very important information, which Heble accepted as gospel truth and proceeded to take action. In the same way, at about 7-30 p.m., an anonymous representative of the press informed the Municipal Commissioner that the Panshet dam had been damaged and enquired if that was correct. Even a man of ordinary intelligence would see through this disingenuous game. I have dealt with the files in the office of the District Superintendent of Police relating to the floods of 1958 earlier and all that remains to be pointed out here is that the files were handed over to the Commission on the day Heble gave evidence, i.e., on 9th May 1962. Even at the time of handing over the files, there was no suggestion that some documents were missing. No further comments need be made on this aspect of the case on behalf of the civil authorities.

At about 5 p.m. on the 11th July, the Collector informed the District Superintendent of Police that an emergency meeting would be held in the Divisional Commissioner's office for considering the situation arising out of the condition of the Panshet dam. The District Superintendent of Police adds that at that time the Collector told him that a portion of the Panshet dam had sunk and there was likelihood of floods and that the meeting was convened to devise ways and means to meet an emergency if it arose. He has explained that the Collector did not ask him to bring the record or files relating to the floods of 1958 nor did he ask him (D. S. P.) to bring with him any of the subordinate officers. Prabhakar just asked him to attend the meeting. Prabhakar had not told him as to which other officers were to attend the meeting. The Collector had not asked him to take his Home Inspector with him to the meeting. Heble, however, took his Home Inspector, Kekre, because he felt that he (Kekre) would be useful to him in various ways. At the same time, Heble did not think it necessary to take Shiveshwarkar, who had handled the floods of 1958, with him. It was in this state that Heble went to attend the Divisional Commissioner's meeting.

Let me now turn to the activities of S. B. Kulkarni, Municipal Commissioner, on the 11th July 1961 and in particular in the afternoon, Kulkarni also has taken up the position that he had not heard of any trouble at Panshet till about 7-30 p.m. on the 11th July. He was only enquiring about the level of water in the Panshet and the Khadakwasla dams from the Executive Engineer's office. According to him, the Collector rang him up at 4 p.m. asking him to attend the meeting convened by the Divisional Commissioner to consider the measures for meeting the floods situation. Kulkarni asserts that the Collector had not mentioned anything about the danger to the dam and convening of the meeting by itself did not indicate that there was anything serious about the dam. Kulkarni felt that the meeting would be helpful to co-ordinate the efforts made by the different agencies for meeting the floods, Kulkarni adds that Prabhakar did not tell him that the Panshet dam was subsiding, nor that military Jawans were sent to Panshet for raising the sinking portion of the dam. According to Kulkarni, he informed the Collector that a meeting of the Corporation was scheduled to take place at 5-30 p.m. on that day and, therefore, he (Kulkarni) would not be able to attend the meeting personally, but, he would send Assistant Municipal Commissioner Darp to attend the meeting. He adds that if he had realised that there was something serious about the situation at Panshet from what the Collector told, him then certainly he would have given preference to that meeting rather than to the Corporation meeting. It is necessary to remember that Prabhakar has substantially supported Kulkarni on this point. Prabhakar admits that he did not tell Kulkarni that a portion of the dam was sinking or that there was any danger to the Panshet dam. It is surprising as to how Prabhakar did not tell Kulkarni that a portion of the Panshet dam was sinking or that there was some danger to the dam, and therefore, the meeting was convened. As pointed out above, according to Heble, Prabhakar informed him about the situation of the dam. If this is so, one fails to understand why Prabhakar made a discrimination between the Municipal Commissioner and the District Superintendent of Police. Prabhakar should, at least, have informed Kulkarni about the situation at Panshet, when the later told him that he was unable to attend the meeting because of the Corporation meeting. Since both Kulkarni and Prabhakar are unanimous on the point, I must conclude that, for reasons best known to himself, Prabhakar did not apprise Kulkarni of the situation at Panshet, although he had taken pains to do so, so far as Heble was concerned. This, by itself, is sufficient to prove that Prabhakar did not either have maturity of understanding or sense of responsibility.

## SECTION 13

WHAT TOOK PLACE IN THE CORPORATION MEETING AT 5-30 P.M. ON  
THE 11TH JULY 1961

Before proceeding to discuss what transpired in the meeting held by the Divisional Commissioner at 6-30 p. m., it is necessary to refer to the Corporation meeting, which took place at 5-30 p. m., because the questions and answers exchanged in the course of this meeting had a great impact upon the further course of action and the attitude of the citizens and the press. There is more than one version as to what transpired in the course of this meeting. The first version is represented by the minutes of the meeting of the Corporation (Ex. 640). As per these minutes, Mithapalli, a corporator, asked one question as follows :

“Is the Panshet dam in danger?”.

A series of statements are then attributed to the Municipal Commissioner purporting to be in answer to the above question. Rendered into English, the answers given by Kulkarni runs as follows :

“It has been raining continuously in the catchment area of the dam. The water level of the river is being watched. Arrangements have been made for evacuating people residing on the banks of the river to other places in case of an emergency. Danger to the Panshet and Khadakwasla dams had increased but it is now learnt that the same has now receded. This is the first year of impounding water at Panshet. In case of danger to that dam, the floods would increase greatly. Danger to the dam had not been completely averted. The Police have been patrolling for that purpose. The District Magistrate has been taking all these precautions. If necessary, assistance of the army also would be taken.”

Kulkarni has explained that the questions asked by Mithapalli was an urgent question in the sense that there was no previous notice in regard to the same. He has further explained that though the reply appears to be continuous, actually each of the sentences was an answer to a separate question and the reply did not amount to a well connected statement. He has also pointed out that the replies given by him were not taken down in shorthand and, therefore, they were not verbatim reproduction of what he said. Kulkarni, however, admits that the recorded reply is fairly correct, so far as the substance is concerned. He further explains that the supplementary questions are not usually taken down. Kulkarni has explained that the question asked by Mithapalli was unexpected in the sense that he was not prepared for it. At this stage, it would be interesting to find out what the ex-mayor, Rohidas Kirad has to say about this meeting. This is what he says (Ex. 908) :

“At about 5-30 p. m., a meeting was held in the Corporation Hall under my chairmanship. This was a monthly meeting and not a special meeting. About 52 members attended the meeting. In the course of the meeting one of the corporators, Mr. Mithapalli, asked a question as to whether the rumour that was spread in the city viz., that there was danger to the Panshet dam, was true. This question was not on the agenda but was an urgent question. I allowed him to put that question. The Municipal Commissioner gave an answer to that question. He stated that there were incessant rains in the area of the Panshet and Khadakwasla dams and that there was danger to Panshet dam, but that danger was averted. At the same time, he added that there would be floods. There were no supplementary questions after

this reply. I am sure that Mithapalli asked only one question. Mr. Kulkarni gave a continuous and running reply orally to the one question asked by Mithapalli. The meeting had commenced at 5-30 p. m. This question was finished within about ten to fifteen minutes and then the meeting proceeded with other business."

It is pertinent to note that the advocate on behalf of the civil authorities has not cross-examined this witness in regard to his answer that there were no supplementary questions. It would therefore be clear that Kulkarni is not telling the truth when he says that there were supplementary questions and his answer was not continuous. It is in this light that we have to analyse the version appearing in the issue of 'Sakal'. Kulkarni's attention was drawn to the version of the questions and answers of the Corporation Meeting as appearing in the issue of 'Sakal' dated 12th July 1961 (Ex. 115). He denied having made the statement, which was attributed to him in the 'Sakal' version that 'there was no danger to the dam according to the experts'. He explained that he did not think it necessary to enter into the controversy over the version of 'Sakal', because there was already a controversy going on on many matters and also a Commission of Inquiry was appointed to go into all these questions. I will separately discuss the version appearing in the issue of 'Sakal' dated 12th July 1961 about the Corporation meeting. In the meantime, I will address myself to the answers, which appear in the authorised version (Ex. 640). It may be, as Kulkarni explained, that the version is not verbatim, because the answers were not taken down in shorthand. At the same time, Kulkarni himself has admitted that the version appearing therein (Ex. 640) is substantially correct. By saying that the version is not literally correct, because it was not taken in shorthand, Kulkarni has opened the floodgate of controversy as to whether the version appearing in 'Sakal' should not be accepted as true. There is as much sanctity for the truth of the authorised version as there is for the version in 'Sakal'. But, more about it presently. I will, first of all, analyse the authorised version (Ex. 640) and explain its meaning with reference to the actual words used and the context in which they have been used. It is necessary to remember that the question asked was whether the Panshet dam was in danger. Ordinarily, one would expect that the answers would have relevancy to this question i. e., danger to the dam. There is no dispute about the meaning of the first three sentences contained in Ex. 640. The dispute, however, centres round the fourth sentence, which runs thus :

"Danger to the Panshet and Khadakwasla dams had increased, but now it is learnt that it has receded."

This sentence clearly indicates that there was danger to both the dams viz., Panshet and Khadakwasla. Kulkarni has offered a very extraordinary explanation about this sentence. He says (Ex. 638) :

"By this, I did not mean to convey that there was danger to either of the dams, but I meant to refer to the danger of flooding".

Then his attention was drawn to the next two sentences, which run thus :

"This is the first year of impounding water in the Panshet dam. In case of danger to that dam, there would be a great increase of floods."

These two sentences read into context of the earlier sentence clearly indicate that Kulkarni had in his mind the apprehended danger to the dams and not the danger of flooding. Flooding is a consequence of danger to the dams. In order to render the quibbling, to which he was resorting to, plausible, Kulkarni stated that the sentence 'if the danger materialises, the flood would greatly rise' was an answer to a specific question, which, according to him, was 'If the danger materialises, whether there was likelihood of greater flood?'. When again

his attention was drawn to the next sentence viz., the above danger has not yet been fully averted, Kulkarni again harped upon the same tone and stated that the word 'danger' has relation to the flood and, by danger, I mean the danger of flood. One is reminded of the quibbling to which Prabhakar was required to take recourse to while explaining the words 'imminent danger' used in Ex. 94. With reference to the last answer viz., in case of necessity, assistance of the army would be taken, also Kulkarni applied the same formula and stated that this was also in reply to the question, whether he would take military assistance, and his reply was in the affirmative. Instead of explaining the meaning of the words in Ex. 640, he has tried to explain them away. We cannot accept Kulkarni's interpretation without doing violence to the plain language employed in the replies appearing in the authorised version (Ex. 640). I feel no hesitation in holding that Kulkarni was aware of the danger to the Panshet dam. It may be that Prabhakar had not informed Kulkarni about the danger to the Panshet dam. It is, however, clear that he came to know of the danger from some other source, which he is not prepared to disclose.

It is significant that according to the replies given by him in Ex. 640, there was danger not only to the Panshet dam, but there was also danger to the Khadakwasla dam. This shows that the officers were aware that the Panshet and Khadakwasla dams went hand-in-hand and anything that endangered the former would also endanger the latter. In the same way, the words "in case of the breach of the Panshet dam, there would be great increase in the floods" are equally meaningful. That shows that these officers were aware or ought, as men of common sense, to be aware that floods would rise to a considerable extent in case of the breach of the Panshet dam. There is, therefore, no wonder if Prabhakar, after hearing that there was danger to the Panshet dam and that heavy floods were expected, would proceed on the pragmatic basis that floods would spread to a limit of four furlongs on either side of the river, because he knew, and every officer must be expected to know, that the floods of 1958 had spread to one and a half furlongs on either side of the river. Finally, the last sentence in Ex. 640 that assistance of the army would be taken, is equally significant. We are told that each of the answers including the above was in response to a leading question put by different councillors. Some of the answers clearly indicate that they could not be in reply to leading questions. The idea of military assistance would ordinarily come to the mind of an officer and not of a layman in the absence of previous experience. Similarly, it is impossible that anyone would ask the question as to whether there was danger to the dams and whether the same had receded. Kulkarni cannot escape his responsibility by saying that the answers were elicited from him by the corporators by putting leading questions. The most serious part of the replies given by him was that, 'it was learnt that the danger had receded'. Kulkarni must explain as to from whom he learnt this and instead of giving explanation, he has tried to explain away the answer by saying that this was also a reply to a question. It is impossible to believe that any corporator would ask the question as to whether it was learnt that danger to the dams had receded or that danger to one of the dams had receded. By making a categorical statement that it was learnt that danger to the dams had receded, Kulkarni gave the impression that it was on authoritative information that he was saying that danger had increased sometime back but that at that moment, it had receded to the background. This again implies that Kulkarni had knowledge about the danger to the dam not only to the one dam but to the two dams and that from recent information, which presumably was authoritative, he learnt that there was no danger to the dams. Kulkarni now tells us that he was not even aware that there was danger to the Panshet dam at any time. I refuse to accept such a fantastic explanation.



In this background, let us now turn to the version appearing in 'Sakal' dated 12th July 1961 under the date and caption: "11th July—Questions and answers in the Corporation meeting". The version states that Rohidas Kirad, Mayor, was in the Chair and after the question was put by Mithapalli, Corporator, the Mayor addressed the Municipal Commissioner in the following terms :—

"Since the Panshet dam was near our town, it is necessary that all members get proper information in regard to the same."

It is significant that *ex-Mayor Kirad*, who was an 'invitee witness', gave evidence before the Commission and yet no question was asked, on behalf of the civil authorities, as to whether he was in the Chair and whether he made the above statement to the Municipal Commissioner on that day. There is no reason why the Correspondent of 'Sakal' should attribute such a statement to the Mayor. I am inclined to believe that *ex-Mayor Kirad* must have made the statement to the Municipal Commissioner, attributed the former in the 'Sakal' version. The 'Sakal' further proceeds to state that the Municipal Commissioner in giving information stated that precautions were being taken, that no danger arose as a result of water in the dam increasing and that sufficient number of trucks were kept ready for evacuating the people residing on the banks of the river. The last but one sentence is very important in the said version *viz.*, 'according to experts, there was no danger to the dam. Kulkarni stoutly denied having made any such statement. There is, however, very little difference between this sentence and the sentence appearing in the authorised version (Ex. 640) *viz.*, that it is learnt that the danger to the dams had receded. When a responsible officer like Kulkarni says that he learnt that the danger had receded, it means that he learnt it from authoritative quarters. In the same newspaper, another item of news had appeared on the same page under two captions :—

"Portion of the dam 20 ft. in length subsided.

No danger to the dam, assistance of Military for repairs."

Under the same heading, the substance of the press-note (Ex. 428), to which reference would be made hereafter, has appeared. Although one of the above captions showed in bold type that there was no danger to the dam, still there is nothing in the contents of the news-item, which says that the danger was averted. The only reference to the danger is in the following words:—

"At 1-30 a.m. (12-7-61), the height of water in the Panshet dam was 67-50 and at Khadakwasla 29-70. The height of water in the Khadakwasla dam went to 31 ft. in the morning. The point of danger is 34 ft."

Dr. Parulekar (Ex. 921), the editor of 'Sakal', was one of the invitee witnesses. The civil authorities have relied on the 'Sakal' report to the effect that there was no danger to the dam, for showing that people were not inclined to believe the truth of the warnings given by the police. This is one of the instance to show that 'invitation' to certain citizens in Poona was based on no other consideration than that of finding out the truth. Dr. Parulekar explains that the heading "There was no danger to the dam and that military was helping for restoration" was based on the information given by Kulkarni, Municipal Commissioner, in the Corporation meeting. We are not concerned about the truth or otherwise of the heading or the reaction it produced on the minds of the citizens, at this stage of the discussion. It may be mentioned that 'Sakal' wrote a special article in its issue dated 24th July 1961 (Ex. 459) under the caption, "Sakal and Government". In this article, the editor of the newspaper has tried to answer the question as to how it was that 'Sakal' came to publish the news there was no danger to the dam. The main reason that has been given in this article for the aforesaid caption was the information given by S. B. Kulkarni *viz.*, that according to experts, there was no danger to the dam. The article refers to the information that was sought from Nagarkar at 12-45 in the night,

wherein Nagarkar was alleged to have said that since the water in the Khadakwasla reservoir was going down, it could be concluded that the quantity of water coming from Panshet to Khadakwasla is decreasing and this indicates that the pressure at Panshet was lessening. Dr. Parulekar, in his deposition (Ex. 921), has explained that on reading this article, Nagarkar contradicted the news-item and stated that the same was incorrect. He asked Nagarkar to send his own version promising that he would give publicity to the same. Nagarkar then referred the matter to Khursale, who was his superior and Khursale told him (Nagarkar) that, it was not proper for any Government servant to enter into any controversy with a press report. Nagarkar, however, submitted in writing to Khursale contradicting the report appearing in 'Sakal'. The Commission is not interested in investigating the truth or falsity of the statement attributed to Nagarkar. It is sufficient to note that Dr. Parulekar himself admitted that there was some possibility of misunderstanding cropping up in respect of the conversation that took place on phone and particularly during night time. Dr. Parulekar added that he called the Correspondent and discussed the matter with him. Parulekar then sums up his impression about his conversation with the Correspondent in the following words :—

“ From my conversation with the Correspondent, I concluded that since this was a technical matter, there was possibility of my Correspondent misinterpreting the information given by Nagarkar.”

The point that I am trying to make out is that, according to Dr. Parulekar, the basis for the heading appearing in the issue of 'Sakal' dated 12th July 1961 that, there was no danger to the dam, was not the information given by Nagarkar but was the reply given by the Municipal Commissioner in the Corporation meeting. Dr. Parulekar asserts that he would regard S. B. Kulkarni as the authoritative spokesman of the Government view. Whatever version is accepted as true between the two viz., one appearing in 'Sakal' about the Corporation meeting (Ex. 115) and the other, the authorised version (Ex. 640), it is quite clear that S. B. Kulkarni did tell the meeting that it was learnt that the danger to the dams had receded. This was a very grave answer to make and that—if Kulkarni is to be believed—was made without ascertaining the facts of the matter. It is regrettable that an experienced and senior officer like S. B. Kulkarni should be responsible for such a lapse, the consequences of which could not be imagined.

Reverting to the part played by Kulkarni after the Corporation meeting, Kulkarni states (Ex. 638) that sometime after 7-30 p.m., a representative of the press informed him that he had information that the Panshet dam had been damaged and enquired of him (Kulkarni) if that was correct. Kulkarni then telephoned to the Collector and enquired from him about the matter. It was at that time that the Collector told him that a portion of the dam had subsided; that that portion was three feet above the water level and that there was strong breeze causing high waves. The Collector also stated that the army personnel was working on laying sand bags on the subsided portion. When Kulkarni was questioned by Mr. Phadke, on behalf of the Citizens' Committee, Kulkarni stated that he did not know the name of the person who gave him the information on the phone. Prabhakar has supported Kulkarni in saying that the latter had made enquiries with him sometime after 7-30 p.m. and in reply he (Prabhakar) gave him information about the subsidence etc. It is a matter of strange coincidence, as remarked already, the another unknown person should volunteer information to the Municipal Commissioner and it was only thereafter that the Municipal Commissioner took a move in the matter and learnt about the real condition of the dam. In my view, this is a cock-and-bull story and hardly deserves any credence.

## SECTION 14

DIVISIONAL COMMISSIONER'S MEETING AT 6-30 P.M. ON THE 11TH JULY 1961

As stated above, at the instructions of Mohite, Prabhakar gave invitations to the two officers viz., the D. S. P. and the Municipal Commissioner, to attend the meeting. The Municipal Commissioner told him that he would depute Darp, Assistant Municipal Commissioner (Special). Prabhakar had not asked the D. S. P. or the Municipal Commissioner to bring with them any of the members of their staff. It is, however, in evidence that D. S. P. Heble had brought with him his Home Inspector and the Collector had brought with him his Deputy Chitnis, Resident Deputy Collector and the Mamlatdars of Poona City and Haveli. It was in this way that the number of those who attended the meeting rose to nine. The following persons attended the meeting :—

- (1) Mohite, Divisional Commissioner, Poona.
- (2) Prabhakar, Collector, Poona.
- (3) Heble, District Superintendent of Police, Poona City.
- (4) Darp, Assistant Municipal Commissioner (Special).
- (5) Pharate, Resident Deputy Collector, Poona.
- (6) Bhosale, Mamlatdar, Poona City.
- (7) Mamlatdar, Haveli.
- (8) Kekre, Home Inspector, Poona City.
- (9) Dandavate, Deputy Chitnis to the Collector.

(Note.—The evidence about the presence of Nos. 6 and 7 is conflicting).

#### I. Absence of the minutes of the meeting

There is considerable controversy as to what transpired at this meeting and what decisions were taken therein. Unfortunately, the minutes of this meeting have not been recorded. Admittedly, there was no difficulty in calling a Stenographer either of the Collector or the Divisional Commissioner to take shorthand notes and then prepare minutes on that basis. The explanation offered by Mohite is that, he did not think it necessary to maintain the record of the minutes of the meeting, although the meeting was important. We proceeded to add that each of the persons called to the meeting was expected to make his own notes as to the part allotted to him and the decisions taken in the meeting could be gathered from the action taken by the members assembled at the meeting. At this point, the Commission put the difficulty to Mohite in the following question (Ex. 516) :—

“It is quite possible that certain decisions reached in the meeting may not be acted upon and in some cases, the action may be in excess of the decisions. That being the case, how can you say that the purport of the decisions can be gathered from the action taken by each individual member?”

Mohite gave the following answer :—

“The notes kept by each member will explain what was the part allotted to him”.

When asked as to when there was no difficulty of calling a Stenographer; why he did not ask him to take notes of the proceedings. Mohite explained as follows :—

“Where the decisions are to be followed over a longer period of time, and compliance to be obtained, it is necessary to record minutes, but where decisions are to be implemented immediately to meet a temporary emergency, there is no need of recording any minutes.”

When Prabhakar was questioned on this point, he stated (Ex. 421) :—

“The minutes of the conference were not recorded, because there was hurry. Stenographers were available to the Divisional Commissioner. We never keep our Stenographers present in the meetings. There is no written record of the decisions taken at the meeting.”

Incidentally, it may be noted that the formula of hurry has been adopted by Prabhakar to explain most of the predicaments in which he was placed. There is no substance in Prabhakar's statement that Stenographers are not kept present in the meetings. The meeting was not a secret one and was attended by several unimportant officers. Stenographers are known to keep confidence of the officers. Realising that the answers given by Prabhakar did not offer satisfactory explanation of the absence of the minutes, Mohite, who was examined much later, has come forward with an explanation viz., that where decisions are meant to be implemented immediately, there is no need of recording any minutes. This is clearly an afterthought. The meeting, obviously, was an important one, where vital decisions were taken to meet an emergency. Although the measures adopted were to be taken in the nearest future, still, it is always advisable to keep the minutes of every important meeting and that is the practice ordinarily followed. No satisfactory explanation has been offered as to why a departure has been made from this salutary practice. As it is, we have no written record about the decisions taken in the meeting and we are left to gather the decisions from the verbal statements made by the witnesses long after the event. Reliance has been placed upon the absence of minutes in the files relating to the floods of 1958. As already discussed above, the absence of the minutes in the record of 1958 floods is no evidence to prove that minutes were not recorded. Further, no questions were asked to Mone himself on this point and it was only Chaturvedi, who was tackled by the advocate on behalf of the civil authorities. The evidence about the decisions supposed to have been taken in this meeting is riddled with contradictions and no consistent picture emerges from the evidence led on behalf of the civil authorities. I will deal with the question of the decisions arrived at in this meeting, a little later. I am referring to this aspect of the matter at this stage with a view to indicate the difficulties experienced by the Commission in arriving at proper conclusion on this point. It is quite possible that if shorthand notes were taken, they were not transcribed and that after the floods, nobody bothered to do so. It is also possible that the transcribed version is not favourable to the officers and, therefore, is being withheld.

## II. Why was no invitation extended to the two Superintending Engineers ?

We have already noted that at the meeting convened by Collector Mone during the floods of 1958, Maydeo was invited to the meeting and he (Maydeo) actually remained present at the same. The presence of the engineers was, obviously, necessary for properly assessing the situation, because without proper assessment, it was not possible to devise proper measures. Prabhakar explained that he did not regard the presence of either Khursale or Desai at the meeting as essential because both of them had already told him that it was not possible for them to say anything more than that, the floods would be bigger than the floods of 1958. He added that he also knew that neither of them would be available at 6-30 p.m. There is no substance in the second reason, because the engineers had told Prabhakar, after their meeting with the Divisional Commissioner at 2 p.m. was over, that they would go to Panshet and return in time to meet Manerikar, who was to arrive by the Deccan Queen. That does not mean that they would not be available at 6-30 p.m. As regards the first reason, even assuming that the engineers had expressed their inability to say anything more than that the floods would be bigger than the floods of 1958—the correctness of which statement I have already refuted—still, the presence of the engineers was essential, because the situation was dynamic and changing from time to time and that it was necessary to know the latest position, particularly after the engineers' on-the-spot inspection of the Panshet dam. Mohite was closely questioned on these points and he replied (Ex. 516) :

“I did not think it necessary to invite the engineers for the meeting, because we had got all information that they could give and also because I knew that they had told us that they would be going to Panshet and would be returning in time to receive Manerikar. I did not know the time of the return of Desai and Khursale to Poona after their visit to Panshet. It may be that they would return at 5 or 6 p.m. I presumed, that they would not be able to attend the meeting before 6-30 p.m. I would certainly have tried to ascertain whether they had returned from Panshet in time to be able to attend the meeting in case we had not met them in the afternoon and discussed the matter with them. It is not correct to say that there was one and only one reason why I did not think it necessary to call Irrigation officers to the meeting. The other reason was that I got all the information which they could possibly give. The situation was liable to change from 1-30 or 2-30 to 6-30 when the meeting was held. But, if there was any change either for the worse or for better, the engineers were expected to come to me and tell, or at any rate, they would have communicated the change to us. I had not asked them to report any change in the situation.” (The quotation is not continuous).

In answer to further questions, he stated that he agreed that he was arranging the measures at 6-30 p.m. on the basis of the information received at 1-30 p.m. He added that he considered it unnecessary to call the irrigation officers or the military officers to the meeting, as they (those officers) were already in the know of things. At a later stage, again Mohite says (Ex. 516) :

"I had no discussion with either Desai or Khursale about the measures that should be adopted in case of the possible breach. I am not aware that Maydeo, the then Superintending Engineer had suggested measures that could be usefully adopted to meet the flood situation in 1958. Even now, I am not aware of that. I am however, now aware that Maydeo had indicated the areas that were likely to be affected by the floods of 1958. I am also aware that Maydeo was proceeding on the footing that there was likelihood of the breach of the Khadakwasla dam..... The presence of the engineers was not necessary for considering the measures to be adopted."

It may not be out of place to mention once again that in 1958 though Maydeo had expressed his inability to give specific or categorical information on the two points raised by Mone which were : (1) the interval of time that would be available between the first warning of danger to the dam and the actual impact of flood water on the city, (2) what were approximately the areas likely to be submerged, Mone had pressed him to give a guidance in that respect. It was thereafter that Maydeo stated that he would indicate very roughly after a reference to the contour map of the area the low lying areas which were likely to be affected. It is also noteworthy that the then D. S. P. accompanied Maydeo to the office of the Municipal Corporation where a contour map was ultimately found and marked. It is in this context that the answer given by Mohite are to be judged. Was it not the responsibility of Mohite and Prabhakar to press the engineers to give them guidance as was done by Mone in 1958? Mohite was further questioned as to why he did not consult, Gadkary, Director, of Minor Irrigation, who was in Poona at that time, or the Research Station authorities at Khadakwasla, for assessing the extent of the floods, when the two engineers had told him that they could not make an estimate of the extent of the floods, and Mohite replied that he did not think it necessary to do so, because he considered the two Superintending Engineers as good experts in the matter and that he did not know whether the Research Station was in a position to make an assessment. He added that he expected Desai and Khursale to approach the experts, in case they found themselves unable to make any assessment of the extent of the floods. The contradiction inherent in the position viz., that the Superintending Engineers were not called, because they had already expressed their inability to assess the extent of the floods, and also the position that Mohite expected Desai and Khursale to approach the experts, in case they found themselves unable to make the assessment, is too apparent to be stressed upon. In order to understand the second position, it must be assumed that the engineers had expressed their inability to make the assessment. Mohite does not say that he himself suggested to the engineers that, if they were unable to make the assessment, they should approach experts. When asked as to why he did not approach the experts, he says that he expected the engineers to approach the experts, because they had found themselves not being in a position to assess the nature and extent of the floods. In my opinion, the presence of the two Superintending Engineers was very much necessary at the meeting and would have proved to be of immense help even in devising the measures. Even if the engineers expressed their inability to make any assessment with the help of the

engineers, the civil authorities would have made some rough and ready estimate about the extent of the floods on a pragmatic basis, and particularly on the basis of the experience of the floods of 1958. It appears to me that the engineers were excluded from the meeting, because the civil authorities were either over-confident or extremely careless in the matter of making an estimate of the areas to which the floods, might extend.

### III. Why were not military officers called to the meeting ?

In 1958 the then Collector of Poona, Mone, had invited Brig. Bedi, Commander, Poona Sub-area and Major Talwar of the Bombay Engineering Group to the meeting convened by him for meeting the flood situation in July 1958. Both these officers remained present and assured co-operation to him. Military assistance was assured and accordingly, army personnel was alerted by Brig. Bedi. The only reason assigned by Mohite for not inviting Brig. Bedi was that, information was already conveyed to him and, therefore, it was not necessary to call him to the meeting. Prabhakar has frankly admitted that, if he (Prabhakar) had gone through the files in his office relating to the floods of 1958, he might, perhaps, have taken more precautionary steps on the 11th July 1961 and in specifying the points of difference between the action taken in 1958 and that taken in 1961, he has mentioned the fact that army assistance was not asked for in 1961. Army assistance was asked for in the morning of the 12th July 1961 after the breach of the Khadakwasla dam. Then the army help could not reach the quarters where it was needed, because the heavy floods had split Poona into two parts. It is evident that the Commander of Poona Sub-area was not called to the meeting, because the civil authorities had not applied their mind to the situation and were taking things lightly. In any case, prudence required that army was alerted beforehand for securing their assistance in proper time. Bedi has stated that after hearing the news from Mone, the then Collector, in July 1958 about the danger of the breach of the Khadakwasla dam, he (Bedi) had kept a number of vehicles ready and had also deployed a number of army men for evacuation. He has further stated that he would have been able to muster about one thousand men (in July 1961) within the cantonment area, for the purpose of evacuation, within about four hours. That shows that if at all army assistance is to be requisitioned, it must be done so several hours before the event. The maxim "Being fore-warned one must be fore-armed" applies to a situation like the one created on the 11th July 1961, and had the civil authorities sufficient imagination, they would not have failed to call the Sub-area Commander and seek assistance from him. Fortunately, for Poona, the headquarters of the Sub-area are the Poona Cantonment. Unfortunately, however, no advantage had been taken of this proximity and although full advantage was taken in 1958, this time it was thrown away due to lack of proper imagination. No harm would have occurred had the Sub-area Commander been called to the meeting and asked to alert the army personnel. Here, at any rate, there was no question of creating any panic, and yet nothing was done in securing the army assistance. From this discussion it is clear that the civil authorities failed to apply their mind to the situation and this lack of vision symbolic of bureaucratic mentality prevented them from approaching the military authorities whose assistance if it was requisitioned

on the 11th itself would have been of immense value in mitigating the consequences of the flood.

#### IV. Why were no citizens or pressmen called to the meeting?

It is an admitted fact that Mohite did not call any of the prominent citizens nor even the members of the legislature to the meeting nor even the Mayor of the Corporation. Nor did he think it fit to call the representatives of the local press. Had the local leaders and the representatives of the press been called to the meeting, they would have carried the message of the meeting through the length and breadth of Poona and also given courage and consolidation to the people, not by the process of keeping back the truth for fear of panic but by disclosing the unpalatable truth and yet assuring them that all that could be done had been done in the present case. The presence of these disinterested persons would also have thrown a clear light about the proceedings of this close-door meeting and the outcome thereof. I cannot understand why the news received from the engineers was kept as a closely guarded secret between the high-ranking officers. When asked on this point, Mohite began by saying that it was a matter of opinion whether useful purpose would have been served by inviting prominent citizens of Poona to attend the meeting. He proceeded to add that he did not think it necessary to associate with the non-officials at that stage of the discussion about the measures to be adopted. It is difficult to understand the obsession and fear of association with the non-officials. Surely, the meeting was not going to discuss any top-secrets of the State. The meeting was called to discuss the measures to meet the possible danger to the Panshet dam. Mohite had ultimately to agree that at least for the purpose of evacuation, co-operation of the citizens was necessary. He also admitted (Ex. 516) :

"We were planning in the meeting at 6-30 p.m. that evacuation operation may be required to be set on foot even during night time. Every preparation was really intended for the night of the 11th. Of course, these arrangements would be still adopted on the next day in case of necessity. The evacuation that we were contemplating was only voluntary evacuation, meaning that it was to take place with the co-operation of the citizens."

It is plain that for an orderly evacuation, the co-operation of the evacuees is necessary. It is equally evident that for the purpose of persuading the evacuees to leave their houses in time before the arrival of the actual danger, a word of advice from the prominent citizens would have made a good deal of difference. It is the case of the civil authorities that people were reluctant to rely upon the news given out by the police and were still more reluctant to leave their houses and some of them, particularly in the most vulnerable areas, had to be evacuated compulsorily. The civil authorities could easily have anticipated, and really ought to have anticipated popular reluctance to leave their homes and at least for that purpose the officers ought to have sought the co-operation of the prominent citizens and members of the press. For members of the hide-bond bureaucracy, however, co-operation of the people is like a red rag to the bull and they would not



condescend to contaminate their sanctity with the touch of the common people. In the absence of the Superintending Engineers, the meeting lost much of its utility; in the absence of the military personnel the meeting was deprived of the most powerful, efficacious and speedy machinery of aid and in the absence of the citizens and the members of the press, the meeting denied itself the opportunity of conveying the real truth without breaking their morale, and to secure co-operation of the people which is essential for any situation of crisis. So much fuss is made of avoidance of creating panic and stampede on behalf of the civil authorities. Had there been any sincerity behind the back of the above profession, then certainly, the first thing which an imaginative administrator would do is to seek the co-operation of the local leaders of the people. The result was that the meeting was reduced to an empty formality. Two important members of the meeting viz., Mohite and Prabhakar, had already met. All that was needed was to take the D.S.P. and the Municipal Commissioner in confidence. I do not think that it was necessary for Mohite to convene such a formal meeting for that purpose. The high-sounding name of emergency meeting cannot deceive any discerning observer.

It has been argued by the civil authorities that in 1958 also the authorities had not called any citizens for the meeting that was convened by Mone and for that purpose a reliance has been placed on the evidence of Shirole (Exhibit 910) who has stated that he had no idea whatsoever as to what precautions were taken by the authorities during the 1958 floods. If the civil authorities want to rely on some steps that were not taken in 1958 as a justification, then they must rely also on the steps that were taken at that time and cannot launch a tirade against Chaturvedi as they have done. According to me if in 1958 prominent citizens were not called to the meeting it was a mistake and that is no justification for not calling the citizens for the meeting held in 1961.

#### V. Discussions at the meeting

The meeting lasted for about an hour and a half. Mohite in his opening remarks informed the members of the meeting of what the engineers had told him. Both Prabhakar and Mohite, in their written statements (Exhibits 422 and 517), have contented themselves by saying that Mohite explained to the officers present at the meeting the position of the Panshet dam as had been reported to him by the engineers, and that thereafter a general discussion in the meeting about the measures to be adopted, took place. Although a detailed account as to what Mohite told the meeting in the opening address, has not been given either by Prabhakar or Mohite, such an account has been attempted by Heble, in his written statement (Exhibit 536), and also by Darp, in his written statement (Exhibit 622). According to these two officers, Mohite spoke about the subsidence and the attempt made by the engineers to raise the level. He also spoke about the local labour having been exhausted and that 200 Jawans were sent for continuing the work. Heble then proceeded to say in his written statement (Exhibit 536) (paragraph 5) :

“The Commissioner further said that while the engineers were hopeful of saving the dam; and had expressed their opinion that, if the night

passed off without any mishap, the dam would be saved, any failure in their efforts to raise the subsided portion of the dam might result in a heavy flood, which, according to them, would be bigger than the 1958 flood. He also disclosed that, according to the engineers, there was no likelihood of any danger to the Khadakwasla dam, as it is a masonry dam."

The account given by Darp, in his written statement (Exhibit 622), is identically worded suggested that the two written statements must have been drafted by the same hand. In answer to questions by the Commission's counsel, Heble stated in his deposition (Exhibit 535) :

"The Divisional Commissioner added that he had asked the engineers to explain the implications of the situation and was told that, if the work of bag-stacking operations was continued uninterruptedly, the dam would be safe, particularly, if the night passed without any mishap."

Heble has stated that to a further question by Mohite as to what would happen if the efforts to raise the sunken portion failed, the engineers replied that the dam would be overtopped and, perhaps, there would be a breach leading to floods in Poona. According to him, the engineers added that the floods would be bigger than the floods of 1958, but were not able to say how much bigger. The engineers had told Mohite that the Khadakwasla dam being a masonry dam, there was no danger to it. I have already pointed out the inherent infirmities in this story, that has been attributed to the engineers by Mohite. In answer to questions by the Commission's counsel as to the account given by Mohite to the meeting, Darp went so far as to say that the Divisional Commissioner never referred to the possibility of the dam breaching. He went on to add (Exhibit 621) :

"I gathered the impression that bigger floods would be released either by further subsiding or opening of all the gates of the Khadakwasla dam. I am not suggesting that the impression that I gathered was that, heavy floods would be due to natural causes, such as heavy rains. The impression that I gathered was that, heavy floods would arise out of the danger to the dam. I concede that we were making preparations to meet the emergency during night time. *The Commissioner never mentioned the Khadakwasla dam at any time.*"

(Quotation is not continuous).

It is one thing to say that there was possibility of the dam breaching and quite another that the engineers were hopeful of saving the dam. Whereas the other witnesses have taken up the position that Mohite stated that the engineers had told him that they were hopeful of saving the dam, Darp goes a step further and says that the Divisional Commissioner never referred to the possibility of the Panshet dam breaching and that he (Darp) gathered the impression that bigger floods would be released by further subsidence or opening of all the gates of the Khadakwasla dam. One can easily imagine what sort of account Mohite must have given to the meeting when an extremely intelligent man like Darp formed the impression that bigger floods would be released by further subsidence or opening of all the gates

of the Khadakwasla dam and not on account of the breach of the dam. In answer to questions by Mr. Phadke, on behalf of the Citizens' Committee, Darp has elaborated his position as follows (Exhibit 621) :—

“I gathered the impression from the discussion in the Divisional Commissioner's meeting that there was danger to the dam. I did not gather the impression that the danger to the dam may be as a result of the possible breach. The words used by the Commissioner were that a portion of the dam had subsided. I do not remember the Commissioner having said that the breach of the dam was imminent or even likely. I agree that the floods that would be released as a result of the breach of the dam would be more severe than any other floods. In that case, possibly, we would have to make preparations on a larger scale. If I had gathered the impression that the dam would breach during night time, I would have thought of taking precautionary measures on a wider scale. For instance, more trucks, or the entire fleet of P. M. T. buses would have been requisitioned and more men would have been requisitioned. When the Divisional Commissioner mentioned that a portion of the dam was subsiding, it did not occur to me to raise the question whether the breach was likely. I do not remember any one raising the question of a possible or likely breach of the dam at the time of discussion in the meeting. Although the Divisional Commissioner used the word “subsided”, I did not understand him to say that a portion of the dam was sinking. I felt that the top portion of the dam had gone off, i.e., fallen down. I did not raise the question as to the difference in the level of water and the top of the subsiding portion. No one raised that question in the meeting. There was no discussion, so far as I remember, on the points mentioned by the Commissioner, viz., that a portion of the dam was subsiding and that there was danger to the dam ..... I did not ask the Divisional Commissioner as to why he was saying that the floods would be bigger than the floods of 1958. By danger to the dam, I understood the Commissioner to mean that the dam would overflow or water may run through the subsiding portion. It never occurred to me that if any portion of an earthen dam is overtopped, then the dam would be washed away.”

It is thus clear that, at best, Mohite gave a very bald and unintelligible account of the situation at Panshet to the meeting. Mohite himself does not appear to have applied his mind to the main question, viz., the difference between the level of water and the level of the subsiding portion. It further appears that Mohite never seriously felt that the dam would breach and that it was necessary to make preparations on the footing that the dam would breach. Darp, who is credited with great experience, so far as the flood measures were concerned, has frankly admitted that, if he (Darp) had known that the breach was likely, he would have devised measures on a more extensive scale. It thus becomes clear that the meeting proceeded with a bad start. Nobody was any the wiser on hearing Mohite's account ; nobody had any doubts and nobody raised any question. Had the engineers been present several questions could have been asked to the engineers or the engineers themselves would have explained the significance of subsidence

and of knowing the difference between the level of water and the top of the subsiding portion. If Darp is to be believed, there was practically no discussion on the points mentioned by Mohite in his opening address.

**VI. What was the account given by Darp about the floods of 1958 and the measures taken at that time ?**

Soon after Mohite's opening address was over, Darp was asked to give an account regarding the floods of 1958 and the measures taken at that time. This aspect has some significance, because both Mohite and Prabhakar have stated that they depended upon Darp to give them a complete idea regarding the floods of 1958 and the measures taken during that time. I do not propose to enter into any details on this point, because I have separately dealt with the question of the floods of 1958 in an exhaustive manner. It is sufficient to refer to certain admissions made by some of the members, who attended the meeting. Darp has frankly admitted that he was not aware of the measures that were taken by the then Collector and the District Superintendent of Police, during the floods of 1958. Whatever measures he took during the floods of 1958, Darp took them on his own initiative. He admitted that he had seen some policemen, four or five in number, in each of the six localities affected by the floods. He also admitted that he saw a police van at Ashanagar. According to him, the population of the six localities affected by the floods of 1958 was round about 6500, which was a very rough estimate. He admitted that the population of the six localities must at least be double the 6500. According to Darp, the actual number of people that were evacuated during the floods of 1958 was 2500 and that he gave these figures from his memory in the course of his account before the meeting. It is an admitted fact that the six localities, which were affected by the floods of 1958, were Pulachiwadi, Ashanagar, Bhimpura, Mangalwar Gadi Tal, Amruteshwar and Sitaphalbag. Mohite asserted (Exhibit 516) that Darp did not explain the areas, which stood the danger of being affected by the floods of 1958 in case Khadakwasla dam breached, nor the areas in which warnings were given. Mohite further says that he did not ask Darp the areas in which warnings were given in 1958, nor did Darp mention those areas. In answer to further questions, Mohite admitted (Exhibit 516) :

"I am now aware that warnings were given in 1958 in wider areas than the areas that were actually affected by the floods, .....  
Since Darp mentioned the areas which were affected by the floods, I felt that warnings must have been given in those areas."

That means that, according to Mohite, Darp did not mention the areas, in which warnings were given during the floods of 1958. Heble (Exhibit 535) in answer to questions by the Commission's counsel stated that Darp did not mention any of the areas which were threatened by the floods. Heble also admitted that no one asked Darp as to whether there was any record in the Municipality relating to the floods of 1958. He added that he did not notice Darp referring to any record. As regards the number of persons alleged to have been mentioned by Darp to Heble in the course of the meeting, in answer to questions by the Commission's counsel, Heble stated :

"Mr. Darp was sitting by my side and I turned to him and asked him aside whether he would give the break-up locality-wise of the persons

affected by the floods of 1958. He then mentioned the number of persons affected locality-wise. He was not holding any paper in hand or referring to any paper, when he was giving these figures to me. The other members of the meeting may not have heard the talk between myself and Mr. Darp ..... I asked Mr. Darp about the number of Policemen deployed during the floods of 1958. He said that he could not give that number, even approximately."

It is thus evident that Darp did not know what steps were taken by the then Collector and the D. S. P., that he did not know that warnings were given in any areas except the six areas affected by the floods of 1958; that he did not know how many policemen were deployed during the floods of 1958 and that he was entirely speaking from memory, while he gave an account of the number of persons affected by the floods and the number of persons actually evacuated during the floods of 1958. It is clear that the account given by Darp must have been very hazy and blurred and would not enlighten the authorities either about the actual situation during the floods of 1958 or the measures taken by the different departments to meet the flood situation. Yet, we are told, in all seriousness, that the civil authorities felt that there was no necessity of referring to the files relating to the floods of 1958 lying in the Collector's or the D. S. P.'s office. Darp contradicted the statement made by Heble viz., that he (Darp) expressed his inability to clarify the position about the extent of the floods locality-wise. Darp claimed he knew the point to which water had reached in all the six localities during the floods of 1958, although he admitted that he had made no note in regard to the same, nor had he consulted any map. His attention was drawn to the statements made by Mohite (Exhibit 516) :

"He (Darp) did not explain to us the areas, which stood the danger of being affected by the floods of 1958, nor the areas in which warnings were given. He only mentioned the areas that were affected in 1958."

Darp asserted that the statements are not true and added that not only he mentioned the areas that were affected in 1958 but that he also mentioned the areas in which warnings were given. He also refuted Mohite's statements viz.,

"I did not ask Darp the areas in which warnings were given in 1958, nor did he mention to us those areas. We simply asked Darp to explain the flood situation in 1958 and the measures taken, and he did accordingly."

The above discussion is sufficient to show how inconclusive the discussions in the meeting were, both in regard to the situation of 1958 floods and also in regard to the situation at Panshet on the 11th July 1961. It is also clear from the above discussion that Darp did tell the meeting the areas where warning was actually given in 1958. It is thus clear that the authorities knew these areas and as I shall point out later they did not take steps to warn even the areas which were warned in 1958.

## VII. Decisions taken in the meeting.

According to Mohite's written statement (Ex. 517), the following plan was chalked out in the course of the meeting:—

"(1) An Emergency Control Room should be immediately established at the Municipal Corporation Building. The Collector, the D. S. P. and the Assistant Municipal Commissioner (Special) should make arrangements to detail staff to man the Control Room. *This staff should, through the police wireless, maintain an all-night watch on the situation at Panshet and inform their superior officers of any emergency arising.*

(2) To keep ready, at the Municipal Corporation Building, five municipal corporation trucks, three jeeps and other vehicles of the Agriculture Department with their drivers.

(3) All Municipal Schools should be kept ready for housing the people who may be required to be evacuated owing to the flood.

(4) The D. S. P. and the Regional Publicity Officer should arrange to give warnings, through their loudspeaker vans, to the people in the low lying areas of the city about the danger to the Panshet dam and the need to be on the alert to move away at two hours' notice, from these areas in the event of any mishap to the dam and consequential flood. The Municipal Corporation staff was also to give similar warnings.

(5) The Mamlatdar, Haveli, should send special messengers to the villages on the banks of the Mutha and Mula-Mutha rivers to warn the villagers to be alert and ready to evacuate in the event of an emergency.

(6) To maintain a sufficient police force for each of the different sectors. This force was to remain, as stand to, at the Emergency Control Room and was to consist of three Police Inspectors, six Police Sub-Inspectors and 120 Policemen. It was also decided to keep, in addition, a sufficient police reserve at suitable places in or near the areas likely to be affected by floods."

Mohite added that he also made arrangements with the Director of Public Health to spare as many trucks as were available and to keep them ready with drivers. Similar arrangements were made by him with the Joint and Deputy Directors of Agriculture, who also were directed to keep all available vehicles for immediate use at the Agricultural College Workshop.

Prabhakar has not given a detailed account of the decisions taken in the meeting. In a general way, he speaks of the Emergency Control Room; how the same was to be managed and by how many persons; the arrangement for transport and the warnings to be given in the lowlying areas. The most important point to be noted with regard to the reference to warnings in these statements is that, they merely refer to warnings being given to the people living in the lowlying areas of the city. The same remark applies to the reference made by each of the civil authorities. No one speaks of the decision of giving warnings in *all* the lowlying areas—a case

which was made out in the course of the depositions of the witnesses. Another feature, which strikes one about these decisions, is that, although each one of the civil authorities now speaks of an emergency control room, the near contemporaneous documents such as, the reports submitted by the Collector to the Government (Exhibits 437 and 438) on 16th July 1961 and 2nd August 1961 respectively, do not use the expression "emergency control room" or "control room" at all. Exhibit 437 uses the following language with reference to the arrangement in the Corporation Building :—

"It was also decided that a squad of following officers (as mentioned in Exhibit 437) should be present at the Corporation Building for the whole of the night of 11th July 1961 to obtain information about the water level at Panshet and Khadakwasla dams and to take immediate necessary precautionary measures in the event of any rise in levels".

Similarly, Exhibit 438 says this :—

"It was decided to establish a combined operational headquarters at the Municipal Corporation Building. Officers of the Police, Municipal Corporation and Revenue Departments were to keep an all-night vigil at the Corporation."

I am not quarrelling here about the use of the words in these reports. Whether the expression used is, control room or operational headquarters or a squad of officers, would not be a matter of much significance so long as the object and the function of that arrangement is clear. Mohite has specifically stated in his written statement (Exhibit 517) :

"This staff should, through the Police wireless, maintain an all-night watch on the situation at Panshet and inform their superior officers of any emergency arising."

Though Mohite has stated that the staff was to maintain an all night watch on the situation at Panshet, Exhibit 437 states that the officers were to obtain information about the water levels at Panshet and Khadakwasla dams. It is thus clear that Exhibit 437 makes no mention of the fact that the officers were to obtain information about the situation at Panshet and the addition now made by Mohite that the staff was to watch on the situation at Panshet is clearly an afterthought. Whatever that may be the decision in the Divisional Commissioner's meeting was that the staff at the Municipal Corporation building was to maintain contact with the police wireless and obtain information either in regard to the situation at Panshet as now stated by Mohite or obtain information about the water level at Panshet and Khadakwasla dams as mentioned in Exhibit 437. If this was the decision, we should expect that the decision was implemented and the Superintendent of Police, Wireless or, at any rate, the wireless operators informed about the establishment of the control room and advised to convey information received by them on the wireless to the control room. This need is highlighted by reason of the specific rules, to which reference would be made hereafter, which prohibit the operators from conveying the information received by them except to the addresses and the informees. No arrangement was made between the wireless authorities on one side and

the civil authorities on the other for a regular channel of communication between the wireless operators and the control room. It may be that certain officers were asked to sit in the control room. Who they were is a question, which I will deal with presently. But, mere presence of a few officers does not constitute a control room, unless the control room was in a position to keep all-night vigil. It is clear that the control room would be in a position to keep such a vigil only if there is a regular and authorised channel of communication between the wireless authorities on one side and the civil authorities on the other. Absence of any such arrangements cast a serious doubt upon the constitution of the Control Room as such on that fateful night. This, perhaps, explains the loose language employed in the near contemporaneous documents, such as "a squad of officers", "operational headquarters", etc.,. It is only in the course of the written statements that, for the first time, the expression "control room" has been used. It is significant to note that the press-note (Exhibit 428), which was issued under the instructions of the Collector and the Divisional Commissioner also makes no mention of the setting up of the control room.

I may usefully refer to a passage in the Report of the Uttar Pradesh Police Commission (1960-61) in regard to the control room of the Bombay City Police at page 186. After pointing out that the wireless transmission which is located at another place is remotely controlled from the control room, the report says :

"The control room works all the 24 hours of the day. The utility of the control room is based on the fact that the officers have, centrally, at their disposal all the facilities for communication with the strategic points in the city and for efficient co-ordination amongst them."

The essence of a control room, it will be clear from the above, lies in the centralisation of channels of quick communication, so that all information will be collected at one place and directions given to all strategic places therefrom. No arrangement was made for wireless transmission from this place nor for the control of such transmission. There was already such a control room at Vishrambagwada. (the V. H. F. control room). That would have been the proper place where the party, if it was intended to function as a control room party, should have been asked to sit. Why was a room in the Corporation Building selected for that purpose? There was no wireless equipment there nor any arrangement of control, of wireless transmission in the Corporation Building. There were only two telephones working there. Why was not Nabar asked to set up wireless apparatus—mobile or otherwise—in the building or the compound? Not only that was not done, no intimation was given to Nabar that control room was set up nor any request made to him to direct the operators to convey information received on wireless from Panshet or Khadakwasla to the so-called control room. The significance will be discussed later. Suffice it to observe that here was a control room, which controlled nothing. At best, a convenient place was chosen for operational purposes. A high sounding label viz., "control room" has been sought to be appropriated (for the first time in the written statements) to camouflage the real object.



### VIII. Warnings

The most important part of the precautionary measures devised in the Divisional Commissioner's meeting related to giving of warnings to the people. This question can be split up into two parts : (1) the nature of the warnings and how the warnings were to be given, and (2) the localities to which warnings were to be given. For the time being, I will confine my attention to the decision taken in the meeting on these points and reserve consideration of the question about the actual warnings alleged to have been given on that night to a later stage of this report. Of course, the wording of the warnings will have to be considered in this context, because it will throw light upon the decisions that were taken about the warnings. Prabhakar, in his written statement (Ex. 422) says (pāra. 23) :

“It was further decided in the meeting that people living in the low-lying areas of the city be warned during the night that Panshet dam was in danger and that they should be in readiness to evacuate with their belongings at two hours' notice. This warning was decided to be given through police loudspeaker van, Regional Publicity Officer's loudspeaker van and police personnel. The staff of the Municipal Corporation were also to go round the areas warning the people of the likelihood of heavy floods.”

Mohite has used almost similar language in dealing with the decision taken in respect of warnings. Although Prabhakar speaks of the decision to give warnings in regard to the danger to the Panshet dam, in his deposition he has tenaciously maintained that the Panshet dam was not in danger and that there was only a possibility of danger to the Panshet dam. On this point, Mohite has completely contradicted Prabhakar. Mohite says that the question as to what warnings should be given to the people was broadly discussed in the meeting. The two points that were decided to be mentioned in the warning were (1) warning the people of the danger of floods, and (2) asking them to be in readiness for evacuation. As would be presently pointed out, the text of the warning at Ex. 427 emphasized danger to the dam. Darp also indirectly supports Prabhakar by saying that the question about danger to the dam was not mooted in the Divisional Commissioner's meeting. If Prabhakar and Darp are to be believed, then Mohite will have to be disbelieved. Not only that, but, we will have to come to the conclusion that the text of the warning (Ex. 427), which is now produced as the authoritative text, on the basis of which warnings were given, is incorrect. I will advert to this question while dealing with the text of the warning. In the meantime, it is necessary to discuss the question of localities, which were fixed upon in the meeting, for giving warnings. The case as elaborated in the course of the inquiry on behalf of the civil authorities is that, it was decided that warnings should be given not only in the six traditional low-lying areas but all the lowlying areas. I have already pointed out that this is an improvement, inasmuch as the expression consistently used in all the written statements of these officers is 'lowlying areas' and not 'all lowlying areas'. From Darp's evidence it is clear that there are only six traditional lowlying areas which really are *all* lowlying areas. If only six areas are

traditionally affected then really speaking they are the only lowlying areas and the improvement sought to be made by the civil authorities by adding the word "all" loses all its significance. There cannot be more lowlying areas in addition to the six traditional lowlying areas. According to me, the improvement sought to be made now is on the basis of the actually affected localities in 1961 and to show that warnings were given also in these localities. It will not be possible to understand the context of the replies given by the various authorities in regard to the localities without referring to the wording of the text of the warning (Exhibit 427), which is alleged to have been issued by Heble and alleged to have been used by Head Constable Chand for announcing the warnings. A photostat copy of Exhibit 427 with Kekre's endorsement and Chand's report is given below :—

427A (गौहर मुबारक) का वही एक 427A  
 खाली बरती ली है मूणजे मरहम 427B

भीमपुरा, पुलाचीवाजी, आडगाव,  
 जोलापकवावा व. मधुसूदन विभाजन  
 राहणी-मा सर्व लोकाल कडविकात  
 मते श्री मानसोदर वरुण व  
 खडकवासला वरुण यांचे ललाच  
 पाण्याने लुडवे भरलेले असून पाण्याची  
 पालडी धोक्याच्या तिनून घेतून  
 भोलेला कोर व मानसोदर वरुणा  
 धोक्यात आहे। ~~विना~~ त्यामुळे  
 काही लालात मुळा वदील अमंडर  
 मोठा पुर येण्याचा संभव असून  
 तो आज घेतून असेल। मुळाची  
 पुराही मोठा मेणाचा सुभ आहे  
 जरी सर्व लोकांनी आपापले सामान  
 गोळा करून दोन वासाच्या कात  
 घुसवून जगा निघून जाण्यास तयार  
 होत।

427A  
 9/5/52  
 Subst. No. 427A  
 Part of Inquiry Report  
 Read and its copy retained  
 and copy returned.

Sub. No. (427) (whole)

Continuation of Inquiry,  
 Fardet and Kharakwadi. On the  
 Rent and receipt. Use of retained  
 and copy retained.

व. सुकन मिरगा  
 डिप्टी मॅा. मॅा  
 मॉ. सुभा वरुण

4/4/52 Continuation of Inquiry of Chaudri

ना वरील गाह्यात वरील विवेकान  
 व नमोद मरुणान काय स्थिति  
 गाह्या वरुण रेपाद वरुण  
 म० १९५१  
 ११/५/५१

875(A)-1 31 12/62

Handwritten text in Urdu script, appearing to be a list or report of items, possibly related to the 'Fambet and Khan' mentioned in the stamp below. The text is somewhat faded and difficult to read precisely.

Handwritten signature or initials in Urdu script, possibly 'JMC' or similar, with some illegible text above it.

Lab. E. No. 422/B  
Commission of Inquiry,  
Fambet and Khan & Co. Darn, Poona.  
Read and received Original retained  
and copy exhibited.  
1/12/62  
Commission of Inquiry

A plain reading of this document makes it clear that warnings were intended to be given to the six specified localities, which are the traditional low-lying localities. At first, Prabhakar frankly admitted that the localities mentioned in Exhibit 427 are the only localities in which warnings were given on the 11th July. He also admitted that the localities set out in Exhibit 427 were mentioned in so many words in the meeting and a decision was taken in the meeting to issue warnings in the localities mentioned in Exhibit 427. He further admitted that the lowlying areas mentioned in Exhibit 427 and Exhibit 428 (press-note to which reference will be made hereafter) were based on the information given by the Assistant Municipal Commissioner, Darp, who mentioned the areas, which were affected by the floods of 1958. At a later stage, Prabhakar asserted that part of Shanwar Peth, part of Narayan Peth, part of Jangli Maharaj Road, Kasba Peth and Kumbhar Ves were also in their contemplation and these areas were decided upon in the Commissioner's meeting. He admitted that he had no particular explanation to offer as to why these areas were not mentioned in the documentary evidence. When asked by the Commission as to why the areas, which Prabhakar later on referred to as being the areas, which were in their contemplation, were not mentioned in the warning (Exhibit 427), Prabhakar stated (Exhibit 421) :

"I cannot give any reason why I failed to include these areas in the the areas to be given warning, although those are important areas."

He was then asked to say whether it was not a fact that he was mentioning the areas from his memory and that there was no record and Prabhakar accepted that position. He further admitted that in the report (Exhibit 437) submitted by him to the Government on 16th July 1961, it was mentioned that warnings were given to the areas that were affected by the floods of 1958. The wording of the report is as follows (Exhibit 437) :—

"It was decided to immediately alert all the areas, which had been affected by the 1958 flood (this was the highest flood that had occurred in Poona previously)."

When confronted with this admission, Prabhakar made the following most important confessions (Exhibit 421) :—

"I now say that the localities mentioned in Exhibit 427 are the only localities in which warning was given on the 11th .....  
I now say that these are the only areas in which warning was given on the 11th July and these were the areas affected by the 1958 floods. I add that I am speaking from my memory and knowledge."

A little later, he added :

"If I remember right, the D. S. P. himself told me that the warnings were given to the above localities."

This was on 4th April 1962. On the adjourned date, which was 6th April 1962, Prabhakar became wiser and stated :

"I now say that the statement contained in paragraph (3) of my report (Exhibit 437) dated 16th July 1961 submitted to the Government, viz.

'It was decided to immediately alert all the areas which had been affected by the 1958 floods', is incorrect. The report of the 16th was made under great hurry and urgency, that is, Mr. Damry was to leave by plane to Bombay the same evening. I, therefore, dictated the report purely from memory mentioning the facts as they came to my memory."

In answer to further questions, Prabhakar stated :

"I am aware of the fact that the report (Exhibit 437), was originally intended to serve the purpose of a brief note for the use of the Chief Minister for the Assembly debate. Subsequently, it was converted into a report. ...., I agree that the statement, which was intended to serve the purpose of a brief to the Chief Minister, was an important one. I also agree that it was equally important that it should be accurate. Although I realised the importance of these matters. I had many other important matters to attend to."

Prabhakar's attention was then drawn to the following statement appearing in the subsequent report (Exhibit 438), dated 2nd August 1961 submitted to the Government :—

"The low-lying areas, which had been affected by the 1958 floods—this was the highest previous flood ever recorded in Poona city—were demarcated and it was decided that the people living in these areas should be immediately warned....."

Prabhakar explained that even at that time he was extremely busy in regard to the flood relief operation and, therefore, had not much time to look into the details of the report (Exhibit 438). The explanations offered by Prabhakar about the important admissions contained in Exhibits 437 and 438, are absolutely unsatisfactory and cannot be accepted as true. Here, it is necessary to remember that in the meeting convened by the Chief Minister at 5 p.m. on the 13th July 1961, the Chief Minister indicated that an inquiry would have to be instituted into the causes leading to the breach of the dams and the Government was anxious to do this. The announcement of the Commission of Inquiry was actually made on 24th July 1961. It is difficult to imagine that Prabhakar would not devote care and attention, which, as a responsible officer, he ought to devote, in respect of the contents of the reports to be submitted to the Government, while submitting these two reports, the first on the 16th July and the second of the 2nd August 1961. According to Prabhakar, the first report was intended as a brief to be placed in the hands of the Chief Minister for enabling the latter to make a statement on the floor of the legislative assembly. Prabhakar, therefore, is expected to weigh every word that he used in this report. The excuse of hurry, obviously, could not be trotted in respect of the report submitted on 2nd August 1961. Prabhakar, therefore, comes forward with another excuse viz., that he was very busy with the work in regard to the flood relief operations. The contemporaneous document (Exhibit 427), which is a public warning and the near contemporaneous documents (Exhibits 437 and 438), clearly indicate that warnings were intended to be given and were given only to the six traditionally low-lying areas. This conclusion is reinforced by the mention of only "low-lying areas" in the written statements of these officers and the improvement made

at the time of the inquiry by adding the word "all" before "lowlying areas". When it was pointed out to Prabhakar by the Senior Advocate on Record that, all the contemporaneous documents referred to the six traditionally lowlying areas and there was no documentary evidence that warnings were given in any other localities, Prabhakar referred to the report made by Head Constable, Chand, below Exhibit 427, to which reference will be made hereafter. Even then he had to admit that there was no other document, in which reference to any other areas than the six lowlying areas had been made.

Mohite has tried to explain as to why his meeting thought of issuing warnings to the areas additional to the six lowlying areas. He stated that it was necessary for devising adequate measures on the assumption that the Panshet dam might breach. When asked to state how it was possible to devise measures without approximately knowing the extent to which the floods might be released, Mohite replied (Exhibit 516) :

"We tried to make an approximate guess about the extent of floods that might be released. We proceeded on an empirical basis as follows : All the lowlying areas were not affected in 1958, so this time we would include all the lowlying areas."

This makes it clear that an administrator would always try to follow some empirical method for assessing the extent of the floods, although the engineers had told him that it was not possible to make near correct estimate. At the same time, it is not possible to accept Mohite's word viz., that additional lowlying areas were contemplated in the meeting, in the face of the entire documentary evidence referred to above. In answer to further questioning, Mohite stated (Ex. 516) :

"It was decided that warning should be given in the lowlying areas. By lowlying areas, I do not mean only the areas affected by the floods of 1958, but all the lowlying areas. The localities were not mentioned. That means that it was generally decided that a warning should be given to all the lowlying areas. The definition and determination of the term "lowlying areas" was left to the D.S.P. and the Assistant Municipal Commissioner. I did not contemplate that there would be any controversy about the definition or the determination of the term lowlying areas. It was decided in the meeting that the Assistant Municipal Commissioner and the Regional Publicity Officer should give warnings. The manner of giving warnings was also left to them. It was expected that the three authorities, viz., the Assistant Municipal Commissioner, the D. S. P. and the Regional Publicity Officer would be meeting again to determine the areas in which warnings were to be given. It was decided that the Regional Publicity Officer should give warnings in his loudspeaker van. It is not true that it was decided in the meeting that warnings should be given only to the following localities viz., Mangalwar Peth, Bhimpura, Pulachi Wadi, Ashanagar, Sitaphalbag and Amruteshwar. It was understood that the D.S.P., the Collector and the Assistant Municipal Commissioner should draft the text of the warning. The text of the warning was not drafted in my presence. I had not seen the text of the warning before, but saw it only yesterday (2nd May 1962) when it was shown to me in

my cross-examination. ....The area mentioned in Ex. 427 are not complete and not in conformity with the decision taken. The text is, therefore, incorrect or inaccurate".  
(The quotation is not continuous).

It was not difficult to mention the additional lowlying areas in the public warning (Ex. 427). No satisfactory explanation is forthcoming as to why this was not done.

That take me to the evidence of D. S. P. Heble, who was admittedly, the author of the Jahir Suchana (public warning, Ex. 427). Heble stated that it was decided in the meeting that warning should be given to all the lowlying areas, but the areas were not defined in the meeting. He has boasted that he was to decide which were the lowlying areas. He then proceeds to add (Ex. 535) :

"I assert that these lowlying areas are quite well-known and there was no need of arriving at any understanding between the three agencies about them ?

On being questioned as to how he would determine the lowlying areas, he replied :

"The test which I would apply would be that the areas, which are bound by the roads, which have a stopping towards the river side, are the lowlying areas".

As the witness complained that the answer was not correctly recorded, he was asked to put his answer in writing, which is at Ex. 537. He admitted that the term 'lowlying' is a relative term. He also admitted that the definition of lowlying area would differ from flood to flood and in the case of high floods, more areas would be affected and, therefore, would have to be included in the category of lowlying areas. In answer to further questions by the Commission, Heble stated :

"I do not agree that Gadi Tal, Bhimpura, Pulachiwadi, Ashanagar, Sitaphalbag, Amruteshwar, Nene Ghat and Apte Ghat are the only areas which can fall under the category of lowlying areas, because we expected that the floods of 1961 would affect more areas than those affected by the floods of 1958 and the definition of lowlying area would vary according to the extent of the floods. I would not call Fergusson College area as a lowlying area, even if it became affected by the floods by some mishap, because it does not fall within the accepted definition."

When the witness was asked to say what is meant by the accepted definition, he replied :

"I now say that by low-lying areas, I mean areas which are adjacent to the river. I cannot say how many feet adjacent to the river would be considered to fall within the definition. There is no standard definition nor is there any definition which is universally accepted. I would now say that by accepted, I mean accepted by a common man or a layman. By common man, I mean a man in the street."



In answer to a further question, he claimed that it would be possible to find a definition which would be acceptable to all men in the street and added :

“That definition will be ‘area adjacent to the river side’. How much adjacent I cannot say.”

It would at once be noticed that Heble began by making a tall claim that all the lowlying areas in the city were well-known to a man in the street and that the matter was beyond controversy or beyond quibble. But, under the impact of the cross-examination, however, he had to admit that the ‘lowlying areas’ is a relative term and would vary according to the extent of the floods. In essence, he stated that what is not a lowlying area this year may become a lowlying area next year, in case the same is visited by floods in that year. The tall claim made by Heble has thus fizzled out into an anarchical position that here were no fixed lowlying areas at all and that they go on shifting from flood to flood according to the extent thereof. In answer to further questions, Heble stated (Ex. 535) :

“I would consider the row of houses on the right hand side of the road from Lakdi Bridge going towards the Fergusson College and Deccan Gymkhana as being on the slope inclined downwards towards the river. I would include the first row of houses also in that category. I would not regard the right side of the Karve Road, as we go from Lakdi Bridge towards Erandavane, as falling in this category, that is, sloping towards the river. I would consider the row of houses on the right hand side of the Jangli Maharaj Road, as we go towards Modern High School from Deccan Gymkhana, as lowlying area with an incline towards the river. Shivajinagar area behind the Court lies in the same category. I would not consider the Congress House as also the Municipal Corporation Building as falling in the category of the lowlying area.”

Heble has tried to exclude the Municipal Corporation Building, because the control room itself came to be located in that building, and if he had admitted that it fell within the category of lowlying areas, he would be faced with the difficulty as to how the control room was decided to be used and used as operational headquarters not only on the night of the 11th July but even after the breach of the dams on the 12th July. It may incidentally be noted here that according to the replies of Heble houses on the left side of the Jangli Maharaj Road as one goes towards the Modern High School from the Gymkhana side are not in the lowlying areas. In the same way houses on the right side of the Karve Road as one goes from the Lakdi Bridge towards Erandavane are also not in the lowlying areas. In his note (Exhibit 537), Heble says :

*‘South bank of the Mutha’.*

“The areas bound by the undermentioned roads and sloping from these roads to the Mutha :

The road from the Cadital Police Chowky to the Mangalwar culvert was the Mangalwar Hospital, from the Mangalwar Culvert past Powle Chowk to Dr. Gharpure’s Nursing Home, from Shanwarwada to the

Shaniwarpeth Police Chowky, from Shanwarpeth Police Chowky to Narayan Peth Chowky, from Narayan Peth Police Chowky to Laxmi Road upto the Alka Talkies, from the Alka Talkies to the Hindu Cremation ground.

*North bank of the Mutha.*

The areas bound by the following roads and sloping from these roads to the Mutha.

Nyayamurti Ranade Road, Shivaji Road, part of the Poona Municipal Corporation, Congress Bhavan Road, Jungalee Maharaj Road and Karve Road."

Had Heble really been aware that all the above areas could be regarded as falling in the category of the so-called 'all lowlying areas', he would not have failed to mention them in the Jahir Suchana (Exhibit 427) itself. Heble has tried to include almost all the areas, which were actually affected by the floods of 12th July 1961 in his so-called category 'all lowlying areas'.

Darp, who is a permanent citizen of Poona and who knows better on this subject than Heble, has debunked Heble's theory that every man in the street knows what the lowlying areas are and that there is no controversy about the definition of lowlying areas. According to Darp, there are six localities, which are traditionally known as lowlying areas, because these are visited by floods from year to year. The answers given by Darp in his cross-examination (Exhibit 621), are so important that they deserve full citation :

"The areas that were traditionally affected by the floods were the six mentioned above. Even these areas were not fully affected. They were affected in parts. No other areas except the six lowlying areas had come into the picture so far as the floods are concerned. I agree that it was necessary for the meeting to sit down and discuss the additional areas that may be affected by the floods of 1961. The problem that we were tackling was not a problem of abstract definition of lowlying areas. The problem was a concrete one of considering which more areas were likely to be affected by the floods that may be released in 1961. I am unable to say why the meeting did not apply its mind to a consideration of the problem. I agree that the solution that was found by the meeting viz., that warnings should be given in all the lowlying areas, was vague and incomplete. I cannot answer as to why the matter was left at that vague stage. I agree that the expression lowlying areas, so far as the city of Poona is concerned, has acquired that usage and significance because of the visitation of floods. It is possible in an abstract sense to call certain areas as lowlying in relation to highlying areas. But, so far as the city of Poona is concerned, certain areas are described as lowlying areas in the context of the floods."

These answers amount to a complete refutation of the theory put forward by Heble. Darp has rightly pointed out that all parts, even in the six traditionally lowlying areas, are not visited by floods. It is only parts of these areas which have so far been affected by the floods. That being the case, if at all anyone wants to talk of additional areas as being likely to be

affected by additional floods, he would, perhaps, say that all parts of these localities must be treated as lowlying areas and strict warnings be given even to the people living in those parts of these areas, which have as yet not been affected by any of the previous floods. To say that there were more lowlying areas than the traditional six, is to allow one's imagination to run riot. The absurdity of the position of relativity to which Heble was driven in the course of the cross-examination was clearly brought out, when he was asked to say whether he would regard Fergusson College area as a lowlying area, in case by some mishap that side comes to be visited by the floods. Realising that the answers given by Darp would, obviously, go against the case put forward on behalf of the civil authorities, Mr. Ghaswala proceeded to ask the following question to Darp :—

“Q. What is your idea about the additional areas, i.e., the areas other than the six localities, mentioned by you ?

Darp's reply was as follows :—

“The additional areas are :

- (1) The areas round about Ras-Shala on the Karve Road,
- (2) Navi Peth.
- (3) Powle Chowk (near the Nursing Home of Dr. Gharpure).
- (4) Kumbhar Ves, and
- (5) Kagadipura (Kasba Peth).

Evidently, these areas would fall far short of the areas mentioned by Heble in Exhibit 537. But, the matter did not rest there. In answer to the same question, Darp proceeded to say :

“I do not consider the following as lowlying areas :—

- (1) Deccan Gymkhana,
- (2) Jangli Maharaj Road,
- (3) Karve Road,
- (4) Prabhat Road, and
- (5) Ghole Road.

Again, Mr. Ghaswala sought permission of the Commission to ask further questions after his cross-examination was over and after the Commission's questions also were over. Permission was granted and in answer to a further question by Mr. Ghaswala, Darp stated :

“I would consider the Deccan Gymkhana Chowk, Topkhana and the areas where the Government godowns are situated, and the river-side areas between Lakdi Bridge and New Bridge as lowlying areas.”

It is quite clear that Darp wanted to retrieve the position for supporting the case on behalf of the civil authorities by including the following areas in the category of additional areas :—

- (1) The areas round about Rasa-Shala on the Karve Road,
- (2) Navi Peth,
- (3) Powle Chowk,
- (4) Kumbhar Ves,
- (5) Kagadipura.

although, as a matter of fact, at no time even a part of these areas was visited by the floods. Darp's final reply to the last question, put by Mr. Ghaswala with the permission of the Commission, also is a half truth. It may be that Topkhana, which is also called Ashanagar, can be included in the category of additional lowlying areas because of the visitation of floods in at least a part of that area in the past, but to treat Deccan Gymkhana Chowk and Government godowns as being situated in lowlying areas, is not correct, even according to the expression of lowlying areas given by Darp.

In my view, the entire controversy about the areas, to which warnings were decided to be given in the Divisional Commissioner's meeting, should be put at rest with reference to the wording of the public warning (Exhibit 427), because that document specifically mentions six lowlying areas to which warnings were actually extended. This document was drafted by Heble soon after the conclusion of the Divisional Commissioner's meeting and when things were fresh in his mind. A good deal of quibbling and tight-rope walking has been done by Heble, with a view to explain away the plain admissions contained in Exhibit 427. It is, therefore, necessary to refer to the evidence given by Heble as to the circumstances and the manner, in which Exhibit 427 came to be drafted by him. As stated above, the work of warnings was entrusted to three agencies, the municipal staff, the police and the Regional Publicity Officer. It was understood that these three agencies should meet after the meeting was over for the purpose of fixing up the draft and also for the purpose of determining the lowlying areas. It is an admitted fact that these three agencies never met after the meeting to discuss any of the above questions. We are now told that Heble undertook to draft the public warning (Exhibit 427) which was meant to be used by the police for giving warnings. Darp tells us that the municipal authorities agreed to issue warnings by going on foot in the six traditionally lowlying areas. The Regional Publicity Officer did not come into the picture, because it is said that the van of the Publicity Department, on which a loudspeaker was mounted, was not in Poona on that night. Admittedly, the municipal staff did not utilise the text at Exhibit 427 for giving warning by them. In fact, neither Darp nor any of the members of the municipal staff had any occasion to see Exhibit 427 before the inquiry started. One important feature about Exhibit 427 is that, it purports to be a proclamation issued under the authority of the District Magistrate (Collector). It is, however, an admitted fact that it was not shown to the Collector nor had it received his approval. Not only this, but, it is an admitted fact that a copy of this document has not been sent to the office of the District Magistrate for the purpose of record. I have already referred to Prabhakar's admission stating that the localities set out in Exhibit 427 were mentioned in so many words in the meeting and his further admission that these were the only areas in which warnings were given on the 11th July 1961. With regard to the authority of the public warning, this is what Prabhakar as to say :

"I had issued a public warning on the 11th July. Exhibit 427 is the warning. The public warning was not issued by me, it was issued by the Police Department under my orders. The draft was not shown to me.

I had on occasion to see Exhibit 427 afterwards. I said earlier that Exhibit 427 was issued under my directions. Now, I beg the permission of the Commission to correct the answer, because I thought that the reference was to the Press-note. The drafting of Exhibit 427 was left to the District Superintendent of Police. I had authorised the District Superintendent of Police to issue a public notice. Now I say that I did not issue any specific authorisation to the District Superintendent of Police to issue any Jahir Suchana. There was a decision taken in the meeting and the District Superintendent of Police acted in pursuance of that decision, ..... My attention is invited to the endorsement in the Jahir Suchana "Special Order under the direction of the Hon. District Magistrate". This endorsement is not incorrect, because I had agreed to the decision to issue a notice in the meeting. To my mind, the endorsement is correct."

Pharate, Resident Deputy Collector, in his evidence (Exhibit 862) stated that since the Collector's office had not received a copy of Exhibit 427, it means that the District Magistrate had issued no orders for the issue of Jahir Suchana at Exhibit 427. Heble made his position, in regard to the question of authorisation, clear in the following words (Exhibit 535) :—

"The warning purports to have been issued under the authority of the District Magistrate. I did not think it necessary to consult the District Magistrate, because the lines, on which the warning was to be issued, were already decided upon."

It will be pointed out presently that in the course of further cross-examination, Heble had to admit that he did not mention the likelihood of the breach of the Panshet dam in the Jahir Suchana (Exhibit 427) for fear that it might cause panic. He admitted that this decision was not arrived at in the meeting but that he himself took the responsibility of watering down that part of the warning (Exhibit 427). It is, therefore, too much to claim that he did not think it necessary to consult the District Magistrate on the text and to secure his approval, because the lines on which the warning was to be issued, were already decided upon.

Turning to the most important part of Heble's evidence as to how he explained the statements contained in the public warning (Exhibit 427) to the effect that warning was to be confined to the six traditionally low-lying areas, it may be remarked that the explanations offered by Heble are on par with the explanations which are usually offered by illiterate witnesses in regard to admissions contained in the documents, to which they are parties. Heble says that he called his Home Inspector Kekre and dictated the draft of Exhibit 427 to him. He admitted that Exhibit 427 does not use the words "all low-lying areas" but simply the words "low-lying areas". When he was asked to say whether the warnings were given or intended to be given only in the six areas mentioned in the document, Heble admitted that that would be so only if the text of the warning without the endorsement made by the Home Inspector was taken into account. It is surprising that Heble should ask the Commission to read the endorsement made by his Home Inspector below the document as part of the document itself and

read the two together. Now, what follows is really breath-taking. Heble says (Exhibit 535) :

"All the contents of the Jahir Suchana Exhibit 427 are correct. I, however, add that the areas mentioned are incomplete. I am offering my explanation as to why the areas were not complete. As soon as I dictated the words, 'Oh, people, hear, hear', I received a telephonic call and there was an interruption. Thereafter, I resumed dictation. I again say that before going to answer the telephone call, I asked my Home Inspector to start drafting the text of the warning and that I would resume the dictation from the point where he had left it. Then I returned to resume the dictation. I asked him whether he had completed the introductory part. He said, yes. I then resumed the dictation without reading the portion he had already drafted nor asking him to read it out for me. I resumed from the words 'Panshet dam and Khadakwasla dam, etc'. I had already explained to him what would be the introductory part. I gave this explanation before going to the telephone. I told him that he should mention the areas in which warnings were to be given. I asked him, before resuming the dictation, whether he had written the areas, and he said, yes. I did not think it necessary to read out the portion myself or ask the Home Inspector to read it out for me, because I was going to have it read over to me, after the draft was completed. After my dictation was completed, the draft was read over to me. I noticed that the description of the areas, in which warning was to be given, was incomplete."

(The quotation is not continuous).

Then the following questions and answers were exchanged between the Commission and Heble :—

"Q. Then why did you not correct the draft so as to give a complete, correct and accurate description of the areas? Can you assign any reason for that?

A. There was no difficulty in getting the draft corrected. I did not think it necessary to correct the draft. After the draft was completed, I gave an oral direction to the Home Inspector saying that the Home Inspector should give orders to the officers, who were to be detained to give warnings, that warnings should be given to all the low-lying areas. I did not myself handle or take out the original document Ex. 427-A with a view to read it or for any other purpose. I looked into this document several days after. By several days, I mean during eight or ten days after the floods. I looked into the document in the ordinary course, when it was returned to me by the Home Inspector and not because there were allegations in the Press stating that proper warnings were not given. The Home Inspector did not make any note on the document in Ex. 427-A in my presence.

Q. Are you suggesting that the direction of the District Magistrate is not necessary for the description of the areas?

A. Yes.

Q. The directions of the District Magistrate were necessary for the remaining contents. Is that what you want to suggest?

A. Yes."

Heble would have us to believe that the portion relating to description of the lowlying areas was written out by Home Inspector Kekre. While the former was away to answer the telephone call. The interruption by the telephone call at the psychological moment is evidently for the purpose of creating an occasion to remain absent to avoid the responsibility of the vital mistake. Accidents, no doubt, happen in life. But, when an accident is trotted out for the purpose of explaining away a clear-cut admission, one cannot accept that excuse at its face value and one has to probe deep to find out whether it is natural or an artificially created one. Assuming that Heble had to interrupt the dictation by reason of some telephone call, there is no explanation as to why Kekre, who was present in the Divisional Commissioner's meeting and was well posted on the facts and on Heble's own admission was briefed by him in the matter of giving a description of the lowlying areas, would commit a mistake of omission in describing the lowlying areas. It is necessary to remember that there was a clear-cut decision taken in the meeting that it was not only the six traditional lowlying areas to which warnings were to be given, but to 'all low-lying areas'. In view of the emphasis alleged to have been laid on "all lowlying areas", it is impossible to believe that Kekre, who himself was present at the meeting and who had received full instructions from his boss, would remain contented by mentioning the six lowlying areas. Assuming further that Kekre for some unknown or inexplicable reason, failed to mention all lowlying areas, it is difficult to understand why Heble did not ask him to read out the portion which was written during Heble's absence. Heble, of course, had to admit that the document was read out to him after the same was completed and that he did notice that the description of the areas, in which warning was to be given, was incomplete. When questioned as to why he did not correct the draft so as to make the description of the areas complete and accurate, Heble admitted that there was no difficulty in getting the draft corrected, but he did not think it necessary to correct the same as he gave an oral direction to the Home Inspector saying that the latter should give orders to the officers who were to be detailed to give warnings, that warnings were to be given to all the lowlying areas. Not even a child would accept such a fantastic explanation. Heble would like the Commission to believe that an oral direction, supposed to have been given by him for which there is no documentary evidence, should be allowed to outweigh the written description contained in the document itself. Further, I cannot understand why any areas were mentioned at all in the document when the purpose would have been fulfilled by stating that all the lowlying areas should be warned. Actually, the areas should not form part of the text of the warning. After the text was recited, the areas, to which warning was to be given, should have been mentioned separately. Whatever that may be, if areas were to be mentioned at all, they must be mentioned completely and fully and this lacuna cannot be filled by any supposed oral directions, which were not even noted down by the Home

Inspector. The explanation offered by Heble is, on the face of it, so ridiculous that merely to state it is to refute it.

The matter does not rest there. Kekre, who took down the dictation of the warning, has made the confusion worse confounded by his explanations as to when the dictation was interrupted, how it was resumed, whether the document was read over to Heble etc. It is significant that Kekre was examined several months after the examination of Heble. In answer to questions by the Commission's counsel, Kekre states as follows (Exhibit 871) :—

“So far as the police are concerned, it was the District Superintendent of Police who fixed the text of the warning. The District Superintendent of Police, Heble, dictated the text to me and I took down. Heble had not prepared any draft. He was not dictating from any paper. He was dictating orally. Heble dictated the words “Jahir Suchana”. In the meantime, he had to go out for answering a telephone call. By the time Heble returned, I had written down the contents of the text beginning from “Oh, people, do hear” till the words “are informed”. Heble took about two or three minutes to return from the phone. The rest of the contents were dictated by Heble. *Before he started dictating, I had read out to him the portion, which I had written down.* When I read over the names of the localities to him, Heble said that I had only mentioned a few localities and it was necessary to mention the words “all lowlying areas”. He, however, added that those words need not be written at that stage, because that amounts to waste of time and that he would orally mention the other areas after the text was ready.”

Pausing here for a moment, I would emphasize the clear-cut and important contradiction between the evidence of Heble and that of Kekre on the point as to when the portion written by Kekre was read out to Heble. Heble is positive that the portion written by Kekre was not read out to him before Heble resumed dictation but it was read out to him at the end of the entire dictation. Kekre has asserted that the portion written by him (Kekre) was read out to Heble, as soon as the latter returned from the phone and before he (Heble) resumed the dictation. In view of the answer given by Kekre, Heble's excuse, which is already very weak, viz., that the portion was read over to him (Heble), after the whole text was written out, also disappears. If Kekre's statement is accepted, then Heble would immediately have added the words “all lowlying areas” instead of asking Kekre to take oral directions from him, as the substitute for the legitimate correction of the so-called inaccuracy. Further statements of Kekre deserve to be cited in the form of questions and answers (Exhibit 871) :

“Q. How much time would be required to write down the words ‘all other lowlying areas’ ?

A. A few seconds.

Q. Then why do you say that to write down those words would amount to waste of time ?



A. I could have added those words without much waste of time, but there was no space for writing those words. I had written up to "विभागांत राहणाऱ्या". The rest of the space on the sheet of the paper was still blank.

Q. Then why do you say that there was no space for writing the words "व इतर सर्वे सखळ विभागांत राहणाऱ्या" ?

A. I again say that the D. S. P. told me that all lowlying areas must be mentioned after the entire text became ready and was read over to him."

Again, stopping here, for a moment, it would at once be noticed that instead of 'want of time' Kekre was driven to say 'want of space' as a proper excuse for his not writing those words in the text. Finding that this excuse could not stand, Kekre trotted out a third excuse saying that the words were not added because Heble told him that all lowlying areas must be mentioned after the entire text became ready and was read over to Heble. By this time, Kekre had realised the predicament in which he had placed himself and his boss. He, therefore, wanted to beat a hasty retreat and volunteered to say :

"I again say that I did not read out to the D. S. P. the portion that was written by me by the time the D.S.P. returned. The text was written at the D. S. P.'s bungalow. After the text was read over by me, the D. S. P. gave me the road boundaries of the areas in which the warning was to be given. I did not take these boundaries down on a piece of paper, because I could remember these areas."

When questioned as to why he did not mention the road boundaries in the public warning (Exhibit 427), Kekre's reply was that he could not offer any explanation. The following questions and answers would throw further light on this point :—

Q. Just consider the anomaly inherent in the following situation. The Jahir Suchana purporting to be issued under the direction of the District Magistrate mentioned certain areas viz., Mangalwar Peth, Bhimpura, Pulachi Wadi, Ashanagar, Sitaphal Baug and Amruteshwar specifically and your oral directions going much beyond these areas and the vague directions in your order also extending beyond the areas specifically mentioned in the body of the Jahir Suchana. Did you not point out to Heble that it would be better for your safety and also in the interest of keeping correct record that the road boundaries, at any rate, the rivers and all areas near the road should be incorporated in the body of the text, Exhibit 427 ?

A. I did not tell. I cannot say why.

Q. Did Mr. Heble realise the anomaly inherent in the situation ?

A. He must have realised this three-four days after the failure of the dam, when he saw the document."

The above passage speaks for itself and no comments are necessary.

While I am on this point, I may as well dispose of the endorsement made below Exhibit 427 and that endorsement runs thus :

"H. C. Chand (Traffic) Gives report after announcing the above proclamation in the localities mentioned above and all other localities near the river with the aid of loudspeaker."

It should be recalled that it was these words 'and all other localities near the river' on which Prabhakar tried to place reliance for the purpose of showing that although there is no other document to support the theory of the civil authorities that warnings were decided to be given to all the lowlying areas, yet there is this endorsement below Ex. 427. But, unfortunately, for Prabhakar even this endorsement does not speak about 'all lowlying areas'. What it says is 'all areas adjoining the river'. I do not think that the position is, in any way, improved by the use of these words viz., all areas adjoining the river, in the endorsement. The word 'adjoining' indicates contiguity to the river and by no stretch of imagination these words could be interpreted to include far-flung areas, which are farther away from the banks of the river. It is also necessary to remember that this endorsement was not made by Kekre in the presence of Heble. Heble has stated that he had mentioned the road boundaries to Kekre. Kekre admittedly has taken no note of the same, because Kekre says that he knew the areas and also the road boundaries. It is significant that road boundaries are not mentioned in this endorsement. Kekre admitted that it would have been better, if he had mentioned the road boundaries instead of the vague words 'and all areas adjoining the river'. When asked to say as to why he did not mention the road boundaries, he admitted that he could not say. He went on to add that he did not think it necessary to mention road boundaries, because Head Constable Chand also knew the same. When, however, Kekre was asked to say why in that case he did think it necessary to mention the words 'and all areas adjoining the river', his reply was :

"I did so because without that the order would have been incomplete. I wanted to make the order complete and self contained, and that it should speak for itself."

If there is any truth in what Kekre says, then the best thing to do was to mention the road boundaries in the endorsement. When this position was put to him, Kekre said that he did not think it necessary. It will deal with the report made by Head Constable Chand at the appropriate stage of this discussion. The point that I am emphasising at this stage is that, the fact that only six areas came to be mentioned in a formal document that was drafted after due deliberations and which went under the name of the District Magistrate, is indicative of the fact that the decision taken in the meeting was that warning should be given to only six lowlying areas. There is nothing strange in this decision, when we remember that according to the civil authorities, that were assembled in the meeting, there was no danger of the dam breaching in any event and that there was no such danger during the night of the 11th July, because 200 Army Jawans were sent to Panshet and in case the night passed off peacefully the dam would be safe. Assuming that they had some apprehension that there would be

floods higher than the floods of 1958, the difficulty would be solved by giving warnings in all the six low lying areas. As Darp has explained, in the past only parts of the six low lying areas were visited by the floods and the worst that could happen was that the entire areas of these six localities would be submerged by the floods of 1961. The theory of giving warnings to the so called 'all the lowlying areas' is, obviously a myth and an invention. A very extraordinary argument has been advanced by the Commission's counsel. According to him, the areas that were decided upon in the meeting, should be determined with reference to the areas in which warnings were actually given. He has further argued that, what is important is not the areas, which were fixed upon, but the areas in which warnings were actually given. This reasoning involves confusion of thought. As a matter of fact, in order to decide to which areas warnings were extended, it is necessary to take into account the background of the decisions taken in that regard. After all, we have to assess the evidence led in respect of the areas, to which warnings were actually extended, by appreciating the merits of the warnings and the background of the decisions taken would certainly throw light and would be helpful. I will show, at a later stage, that the evidence as to the localities in which warnings were supposed to have been extended, does not support the case set up on behalf of the civil authorities that, as a matter of fact, warnings were extended to the other localities in addition to the six traditionally lowlying areas.

It may be asked as to how it is that Prabhakar, who had stated to the engineers, when the latter went to see him on the morning of the 11th July that he would warn the areas within a belt of half a mile on either side of the river, remained contended with deciding to give warnings only to the six lowlying areas, which may not extend beyond two furlongs on either side of the river, in any case. The answer to that question is not far to find. Prabhakar's first impulse was to take a much extensive area on an empirical basis (to use the language of the Divisional Commissioner) founded on the experience of the floods of 1958. But, his senior colleagues must have induced a more chastening mood in Prabhakar, who might ultimately have reconciled himself, to the warnings being given to the six traditionally lowlying areas.

The only question, which remains to be considered on this point is in regard to the implications of the contents of Exhibit 427. The contents will throw light upon the question about the appreciation of the situation not only by Heble but also by the other civil authorities, who attended the Divisional Commissioner's meeting. Admittedly, this was based on the account given by the Divisional Commissioner and this account, in its turn, was based on what the engineers had told the Collector, who acted as the spokesman of the engineers, in conveying information to Mohite. For this purpose, I would analyse the contents of the public warning (Exhibit 427). The first statement, which is important for this purpose is that 'the Panshet reservoir and the Khadakwasla reservoir are full with water to their brim'. This shows that there was very little difference in the level of water and the level of the embankment. The second statement is to the effect that

'the level of water has reached the danger mark'. This supports the interpretation placed by me on the first statement. The third statement is that 'the Panshet dam is in danger'. It is true that nowhere has it been stated that the dam was subsiding, but there is complete unanimity on the point that proper information was given to the civil authorities regarding the subsidence of a portion of the dam. No explanation, however, is forthcoming as to why the fact of subsidence was not clearly stated in this document and why ambiguous phraseology has been employed. To those who know that subsidence was going on, the statements in Exhibit 427 referred to above, would undoubtedly indicate that the Panshet dam was in danger, because subsidence was taking place and water was rising to the crest of the embankment. The fourth important statement contained in Exhibit 427 is that 'because of the aforesaid danger to the dam, there is likelihood of terrific floods coming to the Mutha river' and the fifth statement is that 'the flood is likely to be bigger than any floods visiting the city at any time before'. The expression 'terrific flood' is very significant. The civil authorities have tried to make it appear that all that the engineers told them was that the floods to be released by the likely breach of the Panshet dam would be bigger than the floods of 1958. Even assuming that the engineers told the civil authorities that they could not assess the extent to which these floods would be bigger than the floods of 1958, still it is impossible to believe that the engineers would say that the floods would be somewhat bigger than the floods of 1958. The engineers knew the volume of water contained in Panshet reservoir. They also knew that there were floods in the river already and that although the river was not swollen to the extent to which it was in 1958, still the flood level was fairly high. In these circumstances it is perfectly natural for any engineer to say that the floods would be terrifically big and that is exactly the expression, which has been used by Heble in this proclamation (Exhibit 427), which, admittedly, is his creation. Although Exhibit 427 has been drafted by Heble, still he claims that it substantially embodied the decisions taken in the meeting. The contents of this warning (Exhibit 427), therefore, must be treated as the intellectual offspring of the Divisional Commissioner's meeting. The proclamation (Exhibit 427) though drafted by Heble was purported to have been issued under the directions of the Collector. The Collector has now come forward with the story that he was not consulted about the contents of this proclamation, nor did he (Collector) give his approval to them. It is difficult to accept these statements at their face value. Prabhakar has admitted that Heble was authorised to issue the proclamation in conformity with the decisions taken in the meeting. Heble consistently asserted that all the contents of Exhibit 427 are correct except in regard to the areas, which, according to him, were incomplete. Prabhakar being the author of the document (as the document shows on its face), questions were asked to him with regard to the contents of this document. The following is the substance of the extraordinary answers given by Prabhakar in that respect :

"I was not aware of the water level at Panshet and Khadakwasla reservoirs had reached the danger mark, nor whether the Panshet dam was in danger. The statements contained in Exhibit 427 to the above

effect are incorrect. If I had seen the draft, I would have corrected it. I would not have allowed the sentences to remain as they are. Left to myself, I would have said that there was a possibility of danger to the Panshet dam. It is my contention that the danger to the dam was just a possibility on the 11th night, when I authorised the D.S.P. to issue the Jahir Suchana to the people. Similarly, the following sentence :—

‘Because of the above, there was a possibility (the proper word for Marathi is likelihood) of a terrific flood coming over within a few hours and that flood was likely to be far greater than any of the preceding floods.’

in Exhibit 427 is incorrect. I would not have used the words ‘Because of the above, there was a possibility of a terrific flood in a few hours’. The statement contained in Exhibit 427, viz., ‘that the Panshet reservoir and the Khadakwasla reservoir are filled to the brim and that the levels of water had reached the danger point’ is incorrect. It was not true that, as a matter of fact, the two reservoirs were filled to the brim with water. I think, I was aware of the levels in the Khadakwasla and Panshet reservoirs, when I went to the meeting. I think, I placed this data before the meeting. I did not tell the meeting that the water level had reached the danger point. The levels then reached could not be considered as the danger point. I may also add that I was not aware of the danger mark at that time. The engineers, when they met me at 1-30 p.m., would have spoken to me about the level had that reached the danger point. I did not try to find out in the course of the meeting with the engineers as to what was the danger mark and whether that mark had been reached. No one in the meeting applied his mind to this question. I agree that portions of the warning given to the public are incorrect. The only portion that is correct is the following sentence :—

‘the floods are likely to be far bigger than any of the preceding floods’.

Therefore, all persons should collect their belongings and should get ready to go to safe places within a period of two hours.’

I add that the areas mentioned are correct. The rest of the contents in the Jahir Suchana at Ex. 427 are incorrect. I would say that it was an inaccurate warning but a proper one. When it is stated in Ex. 427 that floods bigger than 1958 floods would come, that means that such floods would come in case of the breach of the Panshet dam.” (The quotation is not continuous).

It will be seen to what desperate length Prabhakar had to go in order to buttress his pet theory that there was only a possibility of the danger to the dam. He has the audacity to tell the Commission that all statements in Ex. 427 are incorrect except only one viz., that the floods are likely to be bigger than any of the preceding floods. It is significant that even here, Prabhakar admitted on his own that the areas mentioned in Ex. 427 are correct. This illustrates the dictum that ‘truth has a very uncanny knack of coming to the surface.’ Again, Prabhakar has admitted that no one in the meeting applied his mind to the question as to what was the danger mark and whether that mark had already been reached. This clearly establishes that the members of the meeting were dealing with the

He then named the officers who have mentioned in the report. He then proceeds to say :

“The Deputy Chitnis to the Collector has not been mentioned in this paragraph (of the report). It is a case of omission. There is no record to show which officers were deputed to remain present in the control room on the 11th July. My memory was normally expected to be more fresh on the 16th July than on the date. When I submitted my written statement to the Commission, i.e. 20th January 1962. The omission of the name of the Deputy Chitnis is explainable because of the urgency and hurry in preparing the report and submitting it to the Government.”

The explanation about hurry and urgency is clearly an afterthought and, as pointed out earlier on Prabhakar's own admission, this document was intended to serve as a brief to the Chief Minister to make a statement on the floor of the Assembly. It is impossible to believe that, when Prabhakar was particular in mentioning all the other officers and even the six police Sub-Inspectors, he would omit to mention the name of his own Deputy Chitnis, who was to spearhead the operations of the control room. Dandavate was cross-examined with reference to the report, dated 16th July 1961. The answers given by him are set out below (Exhibit 829) :

“I am aware that Prabhakar, the Collector, submitted to the Government a report on 16th July 1961 regarding the floods of 12th July 1961. The Collector dictated the report in my presence to the Stenographer. I am aware that in that report, the Collector mentioned the names of the officers, who were deputed to remain present in the control room. I do not remember whether at that time, the Collector mentioned my name to the Stenographer. Now I know that the Collector has not mentioned my name in the report as being one of the persons who were deputed to remain in the control room.”

Dandavate, first of all, admitted that the names of the officers, who were deputed to remain present in the control room were mentioned in the report. When, however, it was pointed out to him that his name did not appear in that report, he pretended failure of memory and stated that he did not remember whether at that time, the Collector mentioned his name to the Stenographer. This shows how convenient and serviceable memory Dandavate possesses. By pretending failure of memory on a vital point, Dandavate has evaded to face further question as to how he accounted for the omission of his name and how he did not point out to the Collector that while dictating the names of the officers, he (Collector) omitted to mention his (Dandavate's) name. Assuming that Prabhakar was in a hurry and, therefore, omitted to mention the name of his Deputy Chitnis, that does not apply to the Deputy Chitnis himself, who was present at the time of dictation and did know that Prabhakar was referring to the officers who were deputed to be present in the control room. Dandavate would have been the first to make the omission good by telling the Collector that his name was not mentioned by him (Collector), and the Collector would not have failed to effect the necessary correction. The only reasonable conclusion that is possible from the vital omission in the earliest document on

record, viz., the report dated 16th July 1961 (Exhibit 437) is that, Dandavate was not present in the control room and that, at any rate, by the 16th July 1961, it was not decided upon that Dandavate should be mentioned as being present in the control room on the night of the 11th July.

I may here take notice of a very extraordinary argument advanced by Mr. Rege (which is also echoed by, Mr. Murudkar). In order to show that mistakes occur in official documents, Mr. Rege has referred to an entry in the Roznama, which says in effect that Mr. Rege was unable to attend the sitting on a particular day because he was in an indisposed state of mind. A similar entry was made, when on a subsequent date I was unable to attend owing to indisposition. At a later date, when this came to my notice, I corrected both the entries. Mr. Rege has assumed that I am responsible for the mistakes in the Roznama. He is either unaware or has forgotten that under the High Court Circulars, the responsibility of writing the Roznama rests on the Court Sheristedar and the Judge only puts his countersignature. At a later stage, he has suggested that there is some foul play about it and has therefore threatened to take appropriate steps. I will deal with this aspect in the epilogue. At this stage, it is sufficient to point out that the argument suffers from the fallacy of false analogy. Firstly, Roznama is a formal document. Secondly, it is written by the Sheristedar. Thirdly, the Judge need not and usually does not read before putting his countersignature. How can the analogy of the mistakes occurring in a Roznama be extended to an important document, such as a report to Government by the Collector, passes my comprehension. Further, as the Sheristedar himself has made it clear, the mistake is due to his inability to write correct English. Any suggestion that there was design or foul play is negatived by the fact that the same language has been employed with reference to my inability to attend the office. What strikes one as odd is that the Commission's counsel should trot out such spacious, fallacious and irrelevant arguments in defence of an officer whose conduct is under inquiry—which inquiry Mr. Rege is supposed to conduct—particularly when an able and more senior counsel has been appointed to defend him.

I have already referred to the admission made by Prabhakar, viz., that there is no documentary evidence to show that Dandavate remained present in the control room on the night of the 11th and on the morning of the 12th July 1961. Reliance, however, is sought to be placed on some jottings appearing on a piece of paper, which is Exhibit 831. Before discussing the contents of this document (Exhibit 831), and the answers given by Dandavate, in explanation of the entries made in this document, it is necessary to have a complete view of the document as it is. A photostat copy of the document is given below.

tremendous problem that arose out of imminent danger of breach of the Panshet dam in a light-hearted and cavalier fashion. It is interesting to note that according to Heble "all the contents of the Jahir Suchana are correct. I however add that the words mentioning areas are incomplete". This is the exact reverse of what Prabhakar says. As pointed out above, Prabhakar says :

"The only portion that is correct is the following sentence :

"The floods are likely to be far bigger than any of the preceding floods. Therefore all persons should collect their belongings and should get ready to go to safe places within a period of two hours".

I add that the areas mentioned are correct. The rest of the contents in the Jahir Suchana at Exhibit 427 are incorrect."

It is impossible to reconcile these antithetical positions and the only conclusion one is driven to is that these officers were acting without any sense of responsibility and without even seriousness of the purpose in tackling a grave situation.

#### IX. Control Room

I have already commented upon the fact that the expression "control room" was not used in the near contemporaneous documents and the significance that attaches to that circumstance. The first question that is to be tackled in respect of the control room is, who were present at that control room and what functions were assigned to each of them. It is the case for the civil authorities that the three agencies viz., the Collector, the District Superintendent of Police and the Municipal Commissioner were to send their respective representatives to the control room. It is their further case that accordingly, Dandavate, Sudame, Unde and Mahamuni remained in the control room as the Collector's representatives through the whole of the night of the 11th July; Police Inspectors Karande, Jadhav and Risaldar were present as representing the District Superintendent of Police, and Sawant, Kadam, Vedpathak, Rahe and Padwe were present as representing the Municipal Commissioner. It is an admitted fact that no one was put in the overall control of the control room. To use the words of Kekre, it was a control room without a controller. In the written statements as also in the evidence led on behalf of the civil authorities, very important and leading role is now sought to be assigned to Dandavate, Deputy Chitnis of the Collector. Dandavate is treated as the linchpin of the system of the control room. It was Dandavate who was to remain in contact with the wireless operators. It was he who was to convey news to the Collector about any untoward developments taking place in the course of that night and also to inform the representatives of the other agencies, who, in their turn, were expected to inform their respective superior authorities. Though it is stated in the written statements and the evidence on behalf of the civil authorities that Dandavate was to remain in contact with the wireless operators in order to get information about the situation at Panshet and to inform the Collector about any untoward developments that may take place, the report Exhibit 437 merely mentions that the officers who were to remain at the Corporation building were to obtain information about the water level at Panshet and Khadakwasla dams. That report does not say that



the officers were to get information regarding the situation at the Panshet dam. It is an admitted fact that Dandavate was present in the Divisional Commissioner's meeting. Considerable evidence was led on behalf of the civil authorities to show that Dandavate was present through the whole of the night of the 11th July in the control room and was keeping contact with the wireless operators and also was conveying information to the representatives of the other agencies. The entire evidence, however, is oral. There is no document, which shows that Dandavate was present in the control room. Reliance, however, is sought to be placed on the jottings supposed to have been made by Dandavate, while he was in the control room on the night of the 11th July 1961 (Exhibit 831). I will presently refer to the entries made in this document and see how far they will establish the presence of Dandavate in the control room. I will also deal with the statements supposed to have been submitted by the representatives of the Municipal Corporation viz., Kadam, Sawant, Vedpathak, Rane and Padwe on the 14th July 1961 (Exhibits 626, 627, 629, 630 and 631 respectively), which refer to Dandavate's presence in the control room. These statements were submitted to the Assistant Municipal Commissioner (Special). The most significant point, however, to be noted in this regard is the absence of Dandavate's name in both the reports submitted by Prabhakar to the Government on the 16th July and the 2nd August, 1961 (Exhibits 437 and 438). At paragraph (3) of Exhibit 437 appears the following passage :—

“It was also decided that a squad of the following officers should be present at the Corporation Building for the whole of the night of 11th July to obtain information about the water level at Panshet and Khadakwasla dams and to take immediate necessary precautionary measures in the event of any rise in levels. The officers so deputed were :

- (1) The Assistant Municipal Commissioner (Special).
- (2) Three Police Inspectors.
- (3) Mamlatdar, Poona City.
- (4) Mamlatdar, Haveli.
- (5) Six Police Sub-Inspectors with the required number of police constables.”

It is significant to note that the name of the Deputy Chitnis does not appear in the abovementioned officers, notwithstanding the fact that, according to the case of the Civil authorities, as developed in these proceedings, he was practically to head the team. When Prabhakar was cross-examined on this point, he stated (Exhibit 421) :

“In my report dated 16th July 1961 (Exhibit 437) I have mentioned the officers who were deputed for the work to be done in the control room at the Corporation Building on the night of 11th July, who were to obtain information about the water level at Panshet and Khadakwasla dams and to take immediate precautionary measures in the event of any rise of the levels.”

NDA

EX 83

11-7-61 (A)

(12/1/61)

9-45 PM

(41/03/61)

Panshet 67-40  
Khadakwasla 30 30



M-Haveli - instructions

5-30 am 12-7-61

67-50 Panshet  
29-60 Khadakwasla

Alert alt

3.17.0.	
गुणवत्ता	अवकाश
मजदूर	अवकाश
सुरक्षा	अवकाश

11-15 PM

Panshet 67-50  
Khadakwasla 29-80

831  
Commission of Inquiry  
Panshet and Khadakwasla  
Read and report to the Commission of Inquiry  
and copy attached.

17/7/61  
Commission of Inquiry

1-0 AM - 67-50  
No rain, no danger

Dandavate was shown the original and this is what he has to say as to when these entries were made :

"After seeing the original, I say that the writings at the right hand side relate to the entries appearing on 11th July 1961 and all the entries on this document on the left-hand side relate to 12th July, 1961."

The first entry under the date 12th July 1961 on the left-hand side purports to have been made at 5-30 a.m. and shows the levels of water in the Panshet and Khadakwasla reservoirs as 67.50 and 29.60 respectively. Then, there is an entry saying "Alert all". This obviously appears to have been made after the news, that the dam was overtopped, was received. We have to concentrate our attention mainly on the entries on the right-hand side. The first entry purports to have been made at 9-45 p.m. and shows the levels at Panshet and Khadakwasla dams at 67.40 and 30.30 respectively. After the letters 'D. G.' appear the words and figures 'School No. 19' as against the locality 'Pulachiwadi' and the words and figures 'School Nos. 61 and 14' as against 'Ashanagar' and 'Juna Topkhana' together. Below the figure '14' appear the words 'Congress House'. I will refer to the explanations of Dandavate in regard to these entries. Then, the time '11-15 p.m.' is mentioned showing that the lake levels at Panshet and Khadakwasla were 67.50 and 29.80 at that time. Then what follows is most important. It reads thus :

"1-00 a.m. — 67.50. No rain, no danger".

These letters are smaller than the letters appearing in the rest of the document. Ordinarily, the entry at 1 a.m. should be on the left-hand side, because after the midnight of the 11th July was passed, 12th July had begun. It was, therefore, suggested to the witness that the figures '67.50' as against 1 a.m. and the letters 'No rain, no danger' must have been added at a later stage and they are small, because they had to be accommodated in the available space. Dandavate was cross-examined, with reference to these entries, by the Commission and the answers given by him to the questions are worth citation in full (Exhibit 829) :

"After seeing the original of Exhibit 831, I say that the writings at the right-hand side related to the entries bearing the date 11th July 1961 and all the entries on this document appearing on the left-hand side relate to 12th July 1961. The entry 'Alert all' was made by me after I received the message that the dam was overtopped. The last entry on the right-hand side of Exhibit 831, showing the timing as 1 a.m. relates to 12th July 1961 and not 11th July 1961. I did not put the date as 12th July 1961 above the entry or in that entry, because the entries on that side were continuous. I am asked to look at the letter 'A' in 1 a.m. in the last entry on the right-hand side of Exhibit 831 and say whether the original letter was 'P' and whether 'P' was turned into 'A'. I say that that is a fact."

Pausing here, for a moment, it may be pointed out that it appeared to the Commission that originally letter 'P' was written, which was turned into 'A' and, therefore, that question was asked and the witness replied that that was a fact. The witness proceeds to state :

"I do not think that the line drawn through 'P' is thicker ink than the first line.

Q. You have already admitted that all the entries on the right-hand side relate to the date 11th July 1961. You have also admitted that originally, the last entry on that side read as "1 p.m.". I am (Commission), therefore, asking you whether the leval shown against that entry as 67.50 related to a message received by you at 1 p.m. on 11th July ?

A. No. It related to the message received at 1 a.m. on the 12th."

Stopping here, for a moment, had this entry been really made at 1 a.m., in the ordinary course, it would appear as the first entry on the left-hand of the document under the date 12th July 1961 and before the entry '5-30 a.m.' etc. It is possible that in the hurry of the moment, one may write 1 p.m. instead of 1 a.m. particularly when the entry was made at night time. Had that been the only circumstance, I would have been inclined to accept the witness's explanation on the point. I, however, notice that the line drawn through 'P' from the top is so artificial as to give an indication that the alteration was made at a later stage. There is another circumstance and that is that these entries have been made in smaller letters and have been squeezed in a narrow space. Let us, therefore, proceed to the questions and answers that follow on this point :

"Q. Can you tell me (Commission) why you stated earlier that all the entries on the right-hand side related to 11th July 1961 ?

A. I considered 1 a.m. as the night of the 11th July 1961.

Q. Have a look at the last entry "No rain, no danger" and tell me whether the same appears in a different ink than the ink used for the other entries ?

A. No.

Q. Tell me, Mr. Dandavate, whether that entry has been squeezed in a very narrow space after the entry 1 a.m. 67.50 ?

A. It is not squeezed in a narrow space.

Q. Can you tell me why you did not write this entry on the left-hand side of the document, particularly so, because, as you have yourself admitted that the entry on the left-hand side related to 12th July 1961 and also because there is ample space ? In particular, I point out to you that the entry which purports to bear the date 12th July 1961 commences from 5-30 a.m. That being the case, you could have written this entry as the first entry bearing the date 12th July 1961. Can you offer an explanation for the oddities ?

A. The paper was folded and there was space to write on the right-hand side and it was continuous. That is the only reason why I wrote out that entry of the message received at 1 a.m. on the right-hand side.

Q. Can you explain how 'p. m.' came to be written instead of a.m. ?

A. It was due to a slip of pen or mistake. I say that I corrected it immediately.

Q. Do you mean to say that it was an unconscious slip of pen ?

A. It was an unconscious slip.

Q. You have written 'No rain, no danger' which is the last entry on the right-hand side on this page. Tell me whether these letters are written in smaller character ?

A. The letters are small because they had to be accommodated in the available space.

Q. Would it be that the whole entry was made afterwards to suit the convenience of the stand taken by the Revenue Officers ?

A. No Sir."

The witness began by denying that the letters were smaller and had to be squeezed in the available space but was forced to admit that the letters were small, because they had to be accommodated in the available space. I will point out, while discussing the wireless messages, that there was no message either at 1 a.m. or at any time thereafter that there was no rain and no danger to the Panshet dam. There is an entry in the Poona Log Book (Ex. 383) purporting to record a message received at 22.46 hours to the following effect :—

"Still no progress of water no danger".

There is discrepancy in this entry and its corresponding entry in the Panshet Log Book (Exhibit 314). I will discuss both these entries exhaustively at a later stage of this report. The point, however, to be noted is that even this entry received in Poona at 22.46 hours on the 11th July does not speak of no rain and no danger to the Panshet dam, nor is there any entry between 22.46 hours and 01.00 hours (1 a.m.) saying 'no rain, no danger' to the Panshet dam. It is Dandavate's case that he was receiving messages from the wireless operators and that the jottings made by him at Exhibit 831 are on the basis of the information he was receiving from the wireless operators. The only two messages that Dandavate is supposed to have received on that night in the control room are, the first at 11.15 p.m. on the 11th July and the second at 1 a.m. The first message relates to the levels of the two reservoirs and the second message to the level of the Panshet reservoir. This has some significance, because, as would be pointed out later, the case made out in the written statements of the civil authorities is that, messages received in the control room related to lake levels. No time has been specified as to when the message 'No rain, No danger' was received. The message at 1 a.m. relating to water level at Panshet is not of much significance. But the message viz., that there was no rain nor any danger to the Panshet dam, would be of considerable significance, because that may support the case set up on behalf of the civil authorities that not only the messages received during night time did not indicate any deterioration in the situation but that they indicated an improvement in the situation and that the danger to the Panshet dam was averted. However it may be noted that Khandekar, the wireless operator is very emphatic that during the night of, the 11th he did not get any information regarding the rain and

weather conditions at Panshet and that he did not communicate any information regarding rain and weather conditions to anybody in Poona. If that is so, then as I shall point out in detail later, the message 'No rain, no danger' jotted down by Dandavate at Exhibit 831 is obviously imaginary. The following points are important so far as the reliability of this entry in Exhibit 831 is concerned :—

(1) This entry is not based on any message either regular message or service message sent out from Panshet and received in Poona at any time.

(2) In any case, there was no message to the above effect received till 1 a.m.

(3) The letters of the entry 'No rain, no danger' are written in smaller characters and on the admission made by Dandavate himself, they had to be small, because they had to be accommodated in the available space. This explanation loses all its importance when we remember that no entry was written on the left-hand side of Exhibit 831 where there was ample space to write this entry.

(4) The Collector's report (Ex. 437) does not speak of Dandavate's presence in the control room, which clearly indicates that Dandavate was not sitting in the control room on the night of 11th July.

(5) The jottings (Ex. 831) are intended to show the presence of Dandavate in the control room. But, it is an admitted fact that some members of the staff were asked to sit in the Collector's office and that they too were receiving messages and were expected to communicate them to the superior authorities. It may be that Dandavate was sitting in the Collector's office and he was receiving some messages at that place. The jottings, therefore, purporting to have been made at 11-15 p.m. or 1 a.m. do not necessarily indicate Dandavate's presence in the control room.

(6) In any case, the last entry on the right-hand side of Ex. 831 is highly suspicious and appears to have been smuggled in with a view to prop up the case that had been made out by the Collector and the Divisional Commissioner justifying the latter's departure to Bombay by the morning train on the 12th July.

While I am dealing with the question as to whether Dandavate was present in the control room on the night of the 11th July, I may dispose of the argument that has been so strenuously urged of behalf of the civil authorities viz., that the presence of Dandavate in the control room on the night of the 11th July is supported by overwhelming documentary evidence. It appears to me that the theory that Dandavate was present in the control room on the night of the 11th July was not present to the mind of the Collector, at any rate, till he submitted his first report (Ex. 437) dated 16th July 1961 and this theory was trotted out at a subsequent period. The strongest argument that has been put forward in support of the presence of Dandavate is the fact that his name is mentioned in the reports submitted by Kadam, Sawant, Vedpathak, Mane and Padwe (Exs. 626, 627, 629, 630 and 631 respectively) on 14th July 1961 to the Assistant Municipal Commissioner (Special), Darp. S. B. Kulkarni, Municipal Commissioner.

does not say that he directed Darp to obtain statements from his subordinates, who did the flood duties on the 11th and 12th July. All that Kulkarni states (Ex. 638) :

“On the 14th or 15th July, the Collector asked me to prepare a note of the events leading to the heavy floods on the 12th of July and the steps taken by us to meet the situation so that it may be of use to the Chief Minister for making a statement on the floor of the Assembly.”

That note is at Ex. 643, which was prepared by Darp and adopted by the Municipal Commissioner. Darp's evidence (Ex. 621) on the question is highly contradictory. At one stage, Darp stated that the five officers submitted their reports of what they did although he had not asked them to submit such reports. Later on, he stated :

“Either on the 13th or 14th, the Municipal Commissioner asked me to obtain reports from the members of the staff regarding the work done by them during the calamity. Accordingly, I asked the officers, who worked under me during the floods, to submit their reports. That is why, these reports were submitted.”

It is, however, remarkable that these reports do not bear the initials of Darp or of the Municipal Commissioner in token of having received them. When questioned on this point, Darp stated :

“I have not put my initials on the reports submitted on the 14th July 1961, nor do these reports bear the signature of the Municipal Commissioner.”

I have already pointed out that the Municipal Commissioner did not submit the original record before the Commission till the date on which he was examined, i.e. 6th June 1962. He had only supplied copies of the record to the Bavdekar Commission on 26th September 1961. On going through the original file, I find that report by the Assessor and Collector of Taxes submitted on 4th September 1961 to the Assistant Municipal Commissioner (Special) bore the rubber stamp and the latter's initials. It is a normal practice in all the office that the officer put at least his initials in token of having received the report. Darp has offered no explanation as to why he did not put his initials below these reports in token of having received the same. There is, therefore, no guarantee that these reports were actually submitted on the 14th July 1961. These documents, therefore, do not refute the view taken by the Commission viz., that at least till 16th July 1961 the name of Dandavate as being the centre of activity in the control room, was not fixed upon and it must have been fixed sometime later. The conclusion drawn by me that the reports of these five officers may not have been submitted on the 14th of July is to a very large extent corroborated by Kulkarni's report, Ex. 643. If these reports were really submitted on the 14th of July and if they had made a mention of Dandavate's presence in the control room then the report Ex. 643 must necessarily mention this fact. It is however significant that the report Ex. 643 does not say that Dandavate was present in the control room on the night of the 11th.

A good deal of rhetorical comments are made in the written arguments submitted on behalf of the civil authorities on the cross-examination centreing round Ex. 831. The entries in the document (Ex. 831) and in particular, the alteration of 'P' in 1 p.m. and the writing of the words 'No rain, No danger' in smaller characters and at the end of the paper were sufficient to rouse the suspicion of any wary Judge. The Commission must pursue any matter which appears *prima facie* suspicious to it. It would be failing in its duty if it does not do so. Of course, merely because questions were asked on the basis of the suspicious look of the document, it does not mean that the Commission has already come to the conclusion that the document is suspicious or that the case is false. It is the duty of the Commission to afford every opportunity to the witnesses to answer a possible hypothesis and that is why a last question was asked to Dandavate and the witness took advantage of that opportunity and gave a denial to the suggestion put to him. The comments made in the arguments on behalf of the civil authorities on this part of the case are in the nature of a desperate attempt to extricate themselves from a difficult position by slinging mud at the Commission. The process of slinging mud has been carried to an extreme limit, so far as the Commission's quest for finding out whether the endorsement in the margin of Ex. 96 was genuine or not. I will deal with the comments of such a nature at that stage a little more exhaustively.

I now propose to discuss the very important question as to whether the control room was expected to keep itself in contact with the wireless stations. According to Prabhakar, three clerks were to be kept in the Deputy Chitnis's branch of his office and were to take messages that may be received during the night of the 11th July and to communicate to him as well as to the Deputy Chitnis. Prabhakar has admitted :

"I did not make any special arrangement for the receipt of the messages from the police wireless control room because I knew that if any message was addressed to me, it would be sent to me."

This clearly establishes that no arrangement was made to the effect that the control room should remain in contact with the police wireless stations. It is equally significant that, in his report (Ex. 437) at paragraph (3) Prabhakar says :

"During the course of the night, the following messages were received on the wireless regarding the levels at Panshet and Khadakwasla Dams :—

(1) 11th July 1961	... 9-45 p.m.	
	Panshet	67-40
	Khadakwasla	30-30
	11-15 p.m.	
	Panshet	67-50
	Khadakwasla	29-30



(2) 12th July 1961

... 1-00 a.m.

Panshet

67-5

Khadakwasla

29-8

It was also reported that there were no rains at Panshet and no danger was feared."

It appears that Prabhakar received these messages himself, because admittedly during the night time, neither Dandavate nor anyone else communicated any messages to him and it was only after 7-15 a.m. on the 12th July that Dandavate conveyed information to the Collector about the message received by the former at about 1 a.m. This further supports the conclusion that no arrangement was made for exchange of communication between the so-called control room and the wireless stations. Dandavate was closely questioned on these points and the following is the substance of what he says (Exhibit 829) :

"Our control room was in contact only with the Police Headquarters wireless and the Vishrambag Police Station control room. No special arrangement was made for communication between the control room on one side and the Police Headquarters wireless station and Vishrambag Police Station control room on the other. I do not know whether the operators in the Police Headquarters wireless station and Vishrambag Police Station control room were instructed to send message to the control room in the Corporation Building. It is, however, true that I received no message from either of these stations on their own initiative. They were only sending messages after queries made by me and in answer to them. I had not given any special instructions to the operators saying that if they had any important information, they should communicate the same to me on their own initiative. Since we in the control room had talks with the Vishrambhag and Headquarters wireless stations, it must be inferred that the Headquarters and Vishrambhag wireless stations must have been made aware of the existence of the control room. Neither I nor anyone else had informed the wireless station that the control room was established. I actually started having talks with the wireless stations. During the very first conversation, I told the wireless station that I am speaking from the control room in the Corporation Building. I did not specifically tell them that the control room was established in the Municipal Corporation Building. I did not tell them who had established the control room. Nor did I tell them the general functions of the control room; but I told them that we were there to receive the information about the situation at Panshet. I deny the suggestion that I never told the wireless station that they should pass on the messages received by them from Panshet and Khadakwasla stations. I told them to pass on the information regarding the situation of the dam. On their own they did not send a single message to us. It is correct to say that even the message about the collapse of the Panshet dam was not conveyed to us in the control room, but was conveyed to the Collector direct. It is not correct to say that the police wireless stations were not aware

about the control room and the functions and duties to be discharged by them. I do not accept the suggestion put to me that in view of the fact that I did not tell them that a control room was established and in view of the further fact that they did not send a message on their own to me and also in view of the fact that they sent a message direct to the Collector, it follows that the control room is a myth. I was the only person taking and asking information on behalf of the Revenue officers..... I received no message through the whole of the night, but on my enquiries, I received some messages. In all, I made about 15 enquiries with the police headquarters wireless station and also with the Vishrambag control room. The enquiries with the Vishrambag did not exceed two or three. In all these enquiries, I was asking information about the situation at Panshet and I got replies to each of my queries. It was only on two occasions that I received information about the situation at Panshet dam. On other occasions I received information about water levels on the night of the 11th..... I did not ask the Headquarters wireless station specifically from whom I was receiving messages or as to whether the messages that were sent were authorised messages.

(The witness volunteers.)

Because I did not doubt the authenticity of the messages.”

(The quotation is not continuous.)

In order to appreciate the truth or falsity of the statements made by Dandavate, we may refer at this stage, to a few passages from the evidence of Khandekar, Head Operator at the Police Headquarters wireless station. He has clearly stated that he conveyed no information to anyone in Poona either regarding rain or weather conditions prevailing at Panshet during that night. He added that, in all, he received two queries from Dandavate. The remaining two or four queries were by other revenue officers, whose names he did not know. He asserted that the revenue officers and the Deputy Chitnis were speaking from the Inspection Bungalow. He then corrected himself and stated that Dandavate was not speaking from the Inspection Bungalow, and the other officers, however, were speaking from the Inspection Bungalow. He finally admitted that the Collector had not authorised him to convey the information either to the Deputy Chitnis or to the revenue officers. At a later stage, he said that the Deputy Chitnis was speaking from the Corporation Building and he made two queries. Further on he added (Exhibit 381) :

“ I now say that Dandavate was speaking from the Corporation Building, whereas the rest of the revenue and P. W. D. officers were speaking from the Inspection Bungalow. It is not true that I have changed the story, viz., that Dandavate was speaking from the Corporation Building and not from the Inspection Bungalow, with a view to fit in with the account given by the Collector. Earlier, I did not recollect to mention Corporation Building.”

At this stage, I should have really confined myself only to the details of the decisions taken regarding the establishment of the control room. One of the decisions according to the civil authorities, was that Dandavate should

remain present at the control room as the Collector's representative. In order to scotch this theory, I had to digress into some of the happenings at the control room and the messages alleged to have been received by Dandavate. I will discuss the question about the happenings at the control room and the wireless messages exchanged between the control room and the wireless operators later. I will also deal with the messages in general at that stage. While discussing the question of the wireless messages and the evidence given by the operators, I will point out that under the rules, the operators have no authority to convey log messages or service messages to anyone and these messages are really meant for internal arrangement between the two wireless stations. I will also show that even if the theory put forward by Nabar, Superintendent of Police Wireless, viz., that in an emergency, log messages can be utilised to convey news which does not relate to internal arrangements, is accepted, still these messages cannot be conveyed except to the addressees or the persons authorised by the addressees. For the time being, the point that I am seeking to establish is that there was no control room, in the proper sense of the term, established at the Corporation Building, because no arrangement was made for keeping contacts with the wireless stations, which means that the principal object with which the control room was established is frustrated. The second point, which I am trying to establish is that, the presence of Dandavate at the control room is a myth and an invention.

It is significant that in the press-note (Exhibit 428), to which reference would be made hereafter, which was issued under the instructions from the Collector and the Divisional Commissioner, makes no reference to the control room as such. On the other hand, it states under the heading "For the information of the editors" as follows :—

"There is a connection between the police headquarters and the wireless station set up at Panshet and Khadakwasla and information about the situation could be secured therefrom. In the same way Darp, Assistant Municipal Commissioner and the Deputy Chitnis of the Collector's office are available on the phone. I would also be available on the phone till 2-30 a.m."

It is not stated in the above passage that the Deputy Chitnis was available on the phone in the control room in the Corporation Building. It does not even show that the Deputy Chitnis would be available on the phone in the Corporation. On the other hand, it states that the Deputy Chitnis of the Collector's office would be available on the phone, which means that he would be available on the phone in the Collector's office. This interpretation gets added support from the admitted fact that three members of the staff of the Collector's office were kept in the office of the Deputy Chitnis for securing information on the phone. At the cost of repetition, I may refer again to the following passage in the Collector's deposition (Exhibit 421) :

"I had also instructed him (Deputy Chitnis) to keep three clerks present in the Deputy Chitnis's branch of my office to take any messages that may be received during the night of the 11th July and to communicate them to me as well as to the Deputy Chitnis. The arrangement

was that the messages were to be communicated to me immediately after the receipt, whenever they spoke of any deterioration in the situation or danger to the Panshet dam. I did not receive any such message during the night time."

Of course, earlier he had stated that he had given instructions to the Deputy Chitnis to go to the Corporation Building to attend to the work of the control room on the night of the 11th July. It is clear that the three clerks to be kept in the Collector's office were to receive messages during night time and were to communicate them not only to the Collector but also to the Deputy Chitnis. I may also refer to another passage in the Collector's deposition (Exhibit 421) :

"I had asked Dandavate to continue to make enquiries from the wireless operators throughout the night. I had not given any instructions to the wireless operators to convey the messages received from Panshet to Dandavate on phone. I do not know whether the operators have no authority to convey the messages to any person except the addressee or the person to whom the message is intended to be informed. Dandavate did not ring me up till after 7 a.m. on the 12th July conveying the information to me about the developments of the Panshet dam, nor did I ring him up asking for information."

Again, in answer to further questions, Prabhakar stated (Exhibit 421) :

"The first phone message that I received on the 12th was from the police wireless station informing me about the levels of water prevailing at Panshet and Khadakwasla dams at 5-30 that morning. .... This information was given to me by the police wireless of their own accord. I did not seek the information. I say that I got two messages from the police wireless station during the night time. Both these messages gave me the levels of water, both at Panshet and Khadakwasla. These messages were given on phone. I cannot say from whom these messages emanated. I cannot say whether they were authentic messages. I did not ask the name of the operator who sent these messages. I did not ask the operator, why he was conveying the messages to me personally, when Dandavate was specially deputed to the control room for that purpose ..... I had not given any instructions to the operators to pass on any messages to me. Nor had I given instructions to them to pass on messages to Dandavate or to clerks in my office. I had kept three clerks in the office during the whole of the night. The object was that, if any information came, they should receive it and take further action. It did not strike me that the police operators would directly ring me up during night time, when my Deputy Chitnis was in the control room and when three clerks were posted in the office of the Deputy Chitnis."

These answers make it clear that the control room was not intended to play the role of a watch-dog, which it can hardly do without securing information from appropriate sources. Even, the issue of the 'Times of India' dated 12th July 1961 (Ex. 433) merely speaks of 'a joint centre

having been set up at the Poona Corporation office for directing the evacuation, if a contingency arises. At best, therefore, the control room was intended to help in the operation of the evacuation, and nothing more than that. How far that help would be effective is another matter. But, the only object, with which this squad of operation was set up in the Corporation Building, was to help the evacuation operation.

**X. Provision for vehicles for the purpose of evacuation and manning of the control room decided upon in the course of the Divisional Commissioner's meeting**

As regards the arrangement of the vehicles for evacuation, Prabhakar's case in paragraph 2 of the written statement (Ex. 422) is as follows :—

“Five trucks of the Municipal Corporation and three jeeps and seven other vehicles of the Agriculture Department were to be stationed at the Municipal Corporation Building for use in the evacuation operations, when necessary.”

It is thus clear that the number of vehicles that was decided upon in the meeting, as per Prabhakar's written statement, was five trucks of the Municipal Corporation, three jeeps and seven other vehicles of the Agriculture Department. Of course, at paragraph (22) of his written statement (Ex. 422), Prabhakar refers to the fact that the Divisional Commissioner actually made arrangements with the Director of Public Health to spare as many vehicles as were available with him and accordingly the Director of Public Health made available eight vehicles for this purpose. Similarly, the Divisional Commissioner asked the Deputy Director of Agriculture to keep other vehicles of the Agriculture Department ready at the Agriculture College Workshop. These vehicles came to fifteen. He then proceeds to add (Ex. 422) :

“In addition, 17 vehicles of the Police Department were kept ready at the Police M. T. Section at the Bhamburda Police Headquarters”.

It is thus clear that Prabhakar makes a distinction between the number of vehicles fixed upon in the meeting and the number of vehicles that were made available, in the course of the night, which appears to be in addition to the vehicles decided upon in the meeting. In other words, according to the trend of Prabhakar's written statement, fifteen vehicles were decided upon in the meeting and actually arrangement was made for fifty-five vehicles in the course of the night.

Mohite has set out the decisions taken in the Divisional Commissioner's meeting at paragraph (7) of his written statement (Ex. 517) and at subparagraph (ii), Mohite says :

“To keep ready at the Municipal Corporation Building five Municipal Corporation trucks, three jeeps and other vehicles of the Agriculture Department with their drivers.”

According to Prabhakar, the number of vehicles from the Agriculture Department, as fixed upon in the meeting, was seven. Mohite does not mention that number but merely says ‘other vehicles of the Agriculture Department’. At paragraph (8) of the written statement, Mohite speaks

of the arrangements, which he made with the Director of Public Health to spare as many trucks as were available and accordingly; two station wagons, four jeep trucks and two mobile vans were kept ready by the Public Health Department. He further says that he made similar arrangement with the Joint and Deputy Directors of Agriculture for keeping available all vehicles ready for immediate use at the Agriculture College Workshop. The number of these vehicles was fifteen. Mohite adds that in addition, seventeen vehicles of the Police Department were kept ready at the Police M. T. Section at Bhamburda Headquarters. It is thus evident that Mohite has made a distinction between the number of vehicles decided upon in the meeting and the number of vehicles for which arrangements were made in the course of the night.

Heble, at paragraph (6) of his written statement (Ex. 536), after referring to the statement made by Darp viz., that five municipal trucks would be available all vehicles ready for immediate use at the Agriculture College him that ten vehicles of the Agriculture Department would be made available. Heble then proceeds to say (Ex. 536) :

“ The Commissioner also arranged with the Director of Public Health for providing eight vehicles of the Public Health Department and for all the remaining fifteen vehicles of the Agriculture Department to stand by. likewise, it was decided to keep all available Police vehicles standing to at the Police headquarters. Their number, I ascertained later, was 18.”

It appears that Heble has made confusion between the decisions taken in the meeting and the arrangements made by the Divisional Commissioner at a somewhat later stage. Before proceeding to discuss this aspect of the matter, it is necessary to point out that admittedly Dandavate, who was present in the meeting, was making some jottings. In the same way, Heble also made some jottings. I will refer to the oral evidence of these two witnesses about these jottings a little later. For the time being, it is necessary to keep these documents (Exs. 439 and 538) before our mind's eye. A photostat copy of Ex. 439 is given below :

951-A

K451

Meeting held by Committee 6-30-62  
on 11-7-62 re: road emergency  
arrangements. Ex 439

7 trucks of deeps ready  
Appt. Mr. T. L. Olin.

Police sh. 2 H.S.

Police will warn

20 Police - men - buses  
will be given.

PSD will inf. Abt. Hwy Comm.

Exh. S. No. 439

Commission of Inquiry,  
Fisher and Khadkewale Dams, Poona.  
Read and returned on / Original returned  
and copy exhibited.

6/4/62  
Commission of Inquiry

Ex. 538 represents the jottings made by Heble. A photostat copy of the same is given below :

3166 Emergency  
2288 Mamlatdar

6521

Anarkhana 5621

Prin for **Ex 538**  
2 pages

1. Mangalwar Pk + Arun name 2000	} 1 st. 20 Pcl/Hk (Fk) (Fk)	} 91 9 adin with
2. Ar. B...		
		67 10 ✓
		29 80 ✓

Duwan Gym

3. Pulavni wash 1000	} 1 st. 20 Pcl/Hk (D.G.) (D.G.)	} P1. kenn
4. Asha Nagar 500		

VB

5. C. Tajal nag 1500	} 1 st. 20 Pcl/Hk (VB) (Hk)	} P1. Pisla
6. Amalishwan 500		

Comptroller Building

Ex. 538  
Commission of Enquiry,  
Punjab and Rajasthan States, Poon.  
Recd and recorded in (Original retained  
and copy exhibited.)  
9/5/62  
Commission of Enquiry



1. ECR. 2. Post 75 - (17)
2. Actions to keep land  
with ECR
3. Evacuation -  
mainland law  
land
4. Rescue & Relief
5. Landings of foodstuffs
6. Rescues
7. Deployment

152 (A-2) <sup>6/2/51</sup>  
Shivraj Nagar - 2  
 1. Pochani-wadi. School No. 19  
 D.G. - School District Board Po  
  
Narayan Peth :-  
 2. Sitapat Bag. → School in Dhingankh  
 (No 75) Poona  
 ✓ 3. Andulichuan. →  
 Ashram  
 Madras  
  
Ashwariya :- School No. 6  
 D.G. -  
 6337 -  
 Varanasi & Co  
 Congress  
  
Mangalwar Peth :- School No. 12  
 F.R.  
 6520  
Prin-pura :-  
 F.R. 7 Tracts } Ashwariya  
 8. 9000 } M.P.  
 taken by landowners in the  
 name of the public but actually  
 the land is held by the  
 private individuals.

352, A-3

(1) 4811 gas - 30000000

(2) 9209 13100000  
 2 20000000

(3) 90120000

(12) 10000000

157111 - 49 60

17/10

10/10

SRPE

Then  
 9/10  
 1/10  
 SRPE

On the first page he has referred to the police force, which according to him, was to remain present in the control room. Three Police Inspectors, six Police Sub-Inspectors and 120 policemen are mentioned on this page. On the second page, in the middle, there is the following entry, which is relevant for the purpose of the present discussion :—

“ 7 Trucks	...	... }	Agri. College M. T. S.”
8 Jeeps	...	... }	

It will thus be seen that there is a remarkable similarity in the number of trucks and jeeps in the jottings made by Dandavate and the jottings made by Heble. Both speak of seven trucks and eight jeeps. Apart from the explanations offered by these witnesses, *prima facie*, it appears that what was decided upon in the meeting was to use 15 vehicles for the purpose of evacuation. Whether Mohite requisitioned any more vehicles from the Public Health and Agriculture Departments and whether these vehicles were actually kept ready, is a matter, which will have to be separately considered. Before doing so, I will refer to two more documents, i.e. reports submitted by the Collector on 16th July 1961 and 2nd August 1961 (Exhibits 437 and 438). It is remarkable that Exhibit 437, while it purports to refer to the decisions taken in the meeting, makes no mention, whatsoever, of the vehicles that were decided upon for the purpose of evacuation. Exhibit 438 also does not refer to the decision taken in the meeting regarding the number of vehicles, as having been fixed. It speaks of the vehicles that were actually kept ready in the Corporation Building for evacuation. The relevant sentence in Exhibit 438 runs thus :

“ 13 trucks, 5 of the Corporation and 8 of the Agriculture Department were kept ready in the Corporation for removing the people and their belongings in the lowlying areas, should it become necessary.”

Although the number of trucks supposed to have been kept ready, according to the statement contained in this document, does not exactly tally with the number mentioned by Prabhakar and Mohite in their written statements, the number mentioned here, which is 13, approximates the number there (in the jottings), which is 15.

In this background, let us now turn to the story set up in the course of the inquiry by the various witnesses. Prabhakar, in answer to questions by the Senior Advocate on Record, says (Exhibit 421) :

“ As far as I remember, the decision taken in the meeting was that five trucks of the Municipal Corporation, three jeeps and seven other vehicles from the Agriculture Department were to be kept ready at the Corporation Building. In addition to the above, 8 vehicles from the Director of Public Health were to be kept ready at the Council Hall. 15 vehicles of the Agriculture Department were to be kept ready at the Agriculture College Workshop. 17 vehicles of the Police Department were to be kept ready at the Police M. T. Section at Bhamburda Headquarters. This decision has not been recorded anywhere. I have mentioned the number from my written statement. The number of vehicles was written in written statement from my memory.”

With reference to Dandavate's jottings in Exhibit 439, Prabhakar stated that they were rough jottings and that he was unable to explain why the mention of the truck in the jottings was incomplete. He agreed that credence should be given to a contemporaneous record in a general way. He further states (Exhibit 421) :

"I had taken the Deputy Chitnis to the meeting so that I should be able to give him instructions then and there. In the ordinary course, the Deputy Chitnis is expected to reduce the instructions given by me to writing. The jottings (Exhibit 439) do not represent the instructions given by me to him. These jottings represent some of the decisions taken in the meeting."

When he was cross-examined with reference to 13 vehicles mentioned by him in Exhibit 438, he stated :

"There is no reference to any more trucks or vehicles having been kept ready on the 11th for the purpose of evacuation. If more trucks were kept ready at different centres, they would find place in the ordinary course, in the reports to the Government. *But this is an obvious omission.* I do not agree that the number of vehicles in our contemplation never exceeded 15. According to me, there are omissions in Exhibits 438 and 439. In all, 55 trucks were kept ready on the night of the 11th. So far as the Collector's files are concerned, there is no document giving the number of vehicles which were kept ready for operations of the 11th night. But, the municipal files will contain the number of vehicles supplied by them, the Commissioner's files will contain the number of the vehicles supplied by the Agriculture and Public Health Departments and Police papers will contain the number of vehicles supplied by them. I cannot say whether I mentioned the figures of these vehicles stated in paragraphs 21 and 22 of my written statement, from memory or after going through the documents of different authorities."

It may be mentioned, at this stage, that according to the jottings (Exhibit 628) made by J. T. Sawant a municipal employee (Exhibit 796), who was present in the control room, in all 23 vehicles arrived in the Corporation Building on that night, five belonging to the Corporation, nine belonging to the Agriculture Department and nine belonging to the Public Health Department. It is intriguing to find that 23 vehicles belonging to different departments actually arrived in the Corporation Building, when according to Mohite, Prabhakar and Heble, only 15 were to arrive at there and the remaining 40 were to remain at the Agriculture College Workshop or the Council Hall and Police M. T. Section. If according to Prabhakar the vehicles of the Director of Public Health were to remain in the Council Hall, how is it that Exhibit 628 shows that 9 vehicles of the Director of Public Health had arrived at the Corporation Building. The paper (Exhibit 628), on which these jottings were made, was found in the municipal file. As already pointed out, copies of the documents in this file were sent to the Bavdekar Commission on 26th September 1961 and the original record was produced before the present Commission on 6th June 1962. The jottings do not bear anybody's signature. The point, however, to be noted is whether reliable and sufficient evidence has been led to show that 55 trucks were decided to be requisitioned and whether, as a matter of fact, they were requisitioned for

the night of the 11th July. According to Prabhakar, the documentary evidence in regard to this may be forthcoming from different departments, such as, the Municipality, Police Department and the Divisional Commissioner's office. So far as the municipal record is concerned, log books of the vehicles belonging to that departments have not been produced and the only evidence forthcoming from that department is the jotting (Exhibit 628) of Sawant referred to above. Municipal City Engineer, Yadav, made some astounding statement in regard to the five trucks belonging to the Corporation. In effect, he stated (Exhibit 793) :

“ At about 5 p.m. on 11th July 1961, I received a phone from Mr. Darp saying that I should supply five trucks and keep them ready in the Corporation Building. He did not tell me the purpose for which these trucks were required, nor did I ask him.....There is a special department in the Corporation for taking measure in regard to the recurring floods in the City of Poona. Mr. Darp was in charge of that department as Assistant Commissioner (Special). My only connection with the aforesaid department was to supply trucks to Mr. Darp, if and when he requisitioned them.....The municipal vehicles are under my control and if any vehicle is required, the requisition must pass through me. No requisition was made to me for more trucks than the five mentioned above either on the night of the 11th or the whole of the 12th. I gave a direction to the Mechanical Engineer to send five trucks to the Corporation Building. I do not know whether these trucks actually went to the Corporation on the night of the 11th.....We maintain log books for these trucks. These log books have not been produced before the Commission. I cannot say why these books have not been produced.”

It is significant that, according to Yadav, five trucks were already requisitioned at 5 p.m. that is to say, before the decision was taken in the Divisional Commissioner's meeting. It is also significant that no satisfactory explanation has been given as to why the log books of these five vehicles have not been produced. It is equally significant that the log books of the other vehicles alleged to have been requisitioned and also the log books of those vehicles, which were alleged to have arrived at the Corporation, have not been produced before the Commission. The log books would have afforded incontrovertible evidence about the fact that the vehicles were moved to the Corporation Building or were kept in readiness at the workshop of the Agriculture College workshop and the Police M. T. Section.

The discussion on this part would not be complete without dealing with the evidence of Mohite, Prabhakar, Heble and Dandavate in regard to the arrangements for vehicles. Prabhakar, in his deposition (Exhibit 421) says :

“ I know that the Divisional Commissioner had made arrangement with the Director of Public Health to spare eight vehicles of his department. I do not know if there is any record to show how many drivers with vehicles reported themselves at the control room on the night of

the 11th. I did not check up the point as to whether, as a matter of fact, the vehicles at various points were actually deployed as decided in the meeting.”

Barring one driver, the rest of the drivers have not put in their statement to show that they had kept the trucks ready either at the Corporation Building or at other point.

In answer to questions in cross-examination with reference to the entries in his jottings (Exhibit 439) relating to vehicles. Dandavate stated (Exhibit 829) :

“By ‘trucks 7 8 jeeps ready’, I meant that 7 truck and 8 jeeps belonging to the Agriculture Department were to be sent to the Corporation Building. It was not written on that paper that these vehicles belonged to the Agriculture Department, nor it was stated that they were to be sent to the Corporation Building compound. I say that these vehicles belonged to the Agriculture Department and that they were to be sent to the Corporation Building compound from memory. The second line reads thus :

‘Agri. M. T. Section’

That means that some vehicles, the number of which I do not remember belonging to the Agriculture Department were to be kept ready at the Agriculture College. This also I speak from recollection, which is roused in my mind by these jottings. I again say that the word ‘Agrl’ by itself connotes the meaning, viz., that some vehicles belonging to the Agriculture Department were to be kept ready at the Agriculture College. The words ‘M. T. Section’ connote that some vehicles belonging to the Police Department were to be kept ready at the police headquarters. I say this from memory, I do not know the number of vehicles which were to be kept ready at the M. T. Section. I do not remember whether the number (of vehicles) belonging to the Agriculture Department and the Police Department was mentioned at the meeting.....I did not take down the number of trucks belonging to the Agriculture Department and the number of trucks belonging to the Police Department which were to be kept ready at the respective stations, because the jottings were meant for my information.”

It will at once be noticed that what an amount of jugglery of words has been resorted to by Dandavate for spelling out meaning from the simple words and figures used in the jottings (Ex. 439) so as to make a case consistent with the one now made out at the inquiry. His elaborate commentary relates to the following two lines in the jottings (Ex. 439) :—

“7 trucks, 8 jeeps ready.

Agri. M. T. Section.”

Dandavate has tried to split the expression ‘Agri. M. T. Section’ into two parts. According to him, the simple word ‘Agrl’ means vehicles belonging to the Agriculture Department. According to him, this word further means that they were to be kept at Agriculture College. He

then proceeds to say that the words 'M. T. Section' connote that some vehicles belonging to the Police Department were to be kept ready at the Police headquarters. It is necessary to remember that the words 'Agrl. M. T. Section' are in the same line. Therefore, if the simple word 'Agrl.' means vehicles belonging to the Agriculture Department, as Dandavate says, then the line would mean that vehicles belonging to the Agriculture Department should be kept in the M. T. Section. No reference is made to police vehicles in the above line at all. In order to show that more than fifteen vehicles were kept ready Dandavate proceeded to spin out of his own imagination that some vehicles from the Agriculture Department and some from the Police Department were also decided to be kept ready for that night. He has admitted that he was speaking all this from his memory. No reason has been suggested as to why the jottings (Ex. 439) should not show that more vehicles than fifteen mentioned explicitly were intended to be kept ready. In any case, the number of vehicles belonging to the Agriculture Department and Police Department, which, according to Dandavate, were in addition fifteen vehicles, has not been mentioned either in the jottings nor has Dandavate been able to say what that number was notwithstanding that he claims to be endowed with fertile memory.

According to Mohite, it was decided in the meeting that the trucks should be kept ready in three centres, namely, the Council Hall, Police Headquarters at Shivajinagar and Agriculture College Workshop. He admitted that the Council Hall is far away from the localities, which were likely to be affected by the floods. He also admitted that none of the areas, which were likely to be affected by the floods was within less than half a mile away from Police Headquarters at Shivajinagar. Mohite then proceeded to say that the total number of vehicles to be employed for the purpose of evacuation was not fixed in the course of the meeting, although the places where the vehicles were to be kept were decided upon. Mohite admitted that Dandavate was scribbling down something. When Mohite's attention was drawn to the fact that in the jottings (Ex. 439) made by Dandavate the latter has mentioned only 15 vehicles, Mohite stated that the number mentioned by Dandavate is not correct, because he has not mentioned the vehicles of the Corporation. Mohite admitted that he could not explain how this omission has crept in the jottings. When questioned as to whether the trucks belonging to the Public Health Department and Agriculture Department were actually kept ready, Mohite evaded the issue by saying :

"The Deputy Director and Joint Director of the Agriculture Department will be able to say whether, as a matter of fact, these vehicles became ready with their drivers to undertake the task. The D. S. P. will be able to say whether the drivers of the vehicles of his department had actually reported themselves to duty to him or to other officers for having held themselves in readiness."

The Deputy Director of the Agriculture Department has not put in his statement, and I have already referred to Heble's deposition, which shows that he himself was not able to say whether the drivers of the vehicles of his department had actually reported for having held themselves in readiness.



Incidentally, it may be pointed out that according to Shaikh Hussain Ráj Mohmed (Ex. 811), watchman in the Council Hall, to whose evidence, detailed reference would be made hereafter, does not say that the vehicles belonging to the Public Health Department had arrived at the compound of the Council Hall on the night of the 11th, nor does he say that any driver had gone with these vehicles. Had these drivers really arrived at the Council Hall, it should not have been difficult for the watchman to ask one of them to go to Mohite's house to deliver Ex. 96, the important message from Col. Braganza, to him (this will form the subject-matter of detailed discussion a little later). It is therefore, legitimate to conclude that the number of vehicles decided upon in the meeting, for being used for evacuation was not more than 15. The contemporaneous documents mention that figure. There is no documentary evidence to show that 55 vehicles were kept in readiness on the night of the 11th.

#### **XI. Were the arrangements meant to be put into effect on the night of 11th ?**

One of the decisions taken in the meeting was that all Municipal Schools in the city should be kept open for accommodating the flood evacuees. For avoiding repetition, I propose to deal with this aspect, when I will be considering the question about the steps that were actually taken on the night of the 11th and also on the 12th July 1961 in pursuance of the decisions at the Divisional Commissioner's meeting.

It is noteworthy that it is the case for the civil authorities that the arrangements devised were meant for being put into operation on the night of the 11th July. Admittedly, however, no separate arrangements for lighting was made in anticipation of the failure of the electric lights due to floods nor any arrangement for boats was made for rescuing people marooned in flood water in the night. The fire brigade was not alerted. This aspect will be considered at length later on, while discussing the nature and scope of the arrangements actually made on that night.

#### **XII. Comparison of the measures taken in 1958 and those taken in 1961**

At this stage, we may compare the measures that were decided on the 19th July 1958 for being put into operation in case of the breach of the Khadakwasla dam, and the measures that were decided upon on the 11th July in anticipation of the breach of the Panshet dam. Prabhakar was asked to go through Mone's reports (Exs. 414 and 419) and to state the points of difference between the decisions taken in 1958 and those taken in 1961, and he has stated the points of difference as follows (Ex. 421) :—

1. The Home Guards were not alerted on the night of the 11th (1961).
2. Army assistance was not asked for (1961).
3. The Superintending Engineer was not invited to attend the meeting convened by the Divisional Commissioner on 11th July 1961.
4. All India Radio was not informed (1961).
5. The Divisional Controller of the State Transport was not invited to the meeting (1961).
6. On the 11th, I took no rounds in the city to see whether alerts were given to the citizens."

Mohite, who was examined at a much later stage, boldly stated that the measures that were taken in 1961 at his instance, could be favourably compared with the measures taken in 1958. He claimed that the measures taken by him were superior in the following respects (Ex. 516) :—

- “ 1. We had established a control room.
2. We had kept vehicles ready at different points.
3. All School buildings were secured for evacuation purposes.
4. We had kept a police force of 120 men and some officers at the Corporation Building.
5. Three Police Inspectors were provided with mobile jeeps.
6. Sufficient number of police force was disbursed at several centres to help in the evacuation.
7. The Mamlatdar were asked to inform the villagers living on the banks of the river Mutha.

Mohite admitted that he was making out these points of distinction only on the basis of Mone's report. He also admitted that he had not gone through the files of Mone in regard to the floods of 1958.

So far as the establishment of the control room is concerned, I have already pointed out that it is a misnomer to call the arrangement made as a control room. The main function of keeping watch over the developments of the situation at Panshet by receiving news from the wireless was not performed nor was it intended to be performed by the control room, as has been shown above, and as would be further elaborated while dealing with the question of wireless messages. It is further an admitted fact that nobody was put in-charge of the control room and it was practically a control room without a controller.

As regards keeping the vehicles ready, I have already offered my comments and pointed out that the number of vehicles that was intended to be kept ready must not be more than fifteen, and even if Sawant's report (Exhibit 628) is to be accepted, only twenty-three vehicles had actually arrived at the Corporation compound. Kekre has also stated that he saw about 20 vehicles as having arrived at the Corporation compound. Chaturvedi (Exhibit 840) has stated that he had made arrangement for 50 to 60 trucks on the night of the 19th July 1958. He has added that, in addition to the above, the State Transport was requested to keep their trucks at his disposal. He has further stated that it was decided in the meeting that 50 to 60 trucks should be made available for evacuation purposes, and these trucks were kept at different places. According to Chaturvedi, some more trucks were kept in the Transport Depot so that they would be available to be put into operation at the nearest centre of trouble. Chaturvedi also stated that he had asked the Deputy Superintendent of Police to secure five or six boats of the army and actually these boats were secured. Chaturvedi had also asked the police to keep torches with them in case of failure of electric lights. He had also asked the Police to keep the wireless sets ready to maintain communication in anticipation of the breakdown in the telephonic connections. Mohite says that he has contrasted the measures decided upon in 1958 with the measures in 1961 on the basis of Mone's report. Mone, in his report (Exhibit 419)

has positively asserted that the Poona Municipal Transport and the State Transport buses were kept in readiness to assist in evacuation in case of necessity. That has been completely ignored by Mohite in instituting the comparison. On the third and fourth points of the measures viz., all school buildings were secured for evacuation purposes, and keeping a police force of 120 men and some officers at the Corporation Building, I will offer my comments later. As regards the sixth point, viz., sufficient number of police forces were disbursed at several centres to help in the evacuation, it may be noted that Chaturvedi had given directions, during the floods of 1958, for mobilising the entire available force. It is true that comparisons cannot be quite appropriate between two different situations, because of various reasons. But, remembering that the magnitude of the floods likely to occur in 1961 would be far greater than the floods likely to occur in 1958 when Khadakwasla dam was the only dam which was apprehended to breach, one expected the civil authorities to make more elaborate preparations. Both in the matter of localities in which warnings were to be given and were actually given and preparations for evacuation made, the arrangements made in 1961 were wholly unsatisfactory and insufficient. It is significant that the Poona Station of the All India Radio was not asked to broadcast any warning to the citizens either on the night of the 11th July or even in the morning of the 12th July. In 1958 an officer of the rank of the Deputy Collector was deputed to the Station of the All India Radio and the warning was broadcast twice. Neither the Home Guards nor the military were alerted in 1961 as they were in 1958. There is no substance in what Mohite chose to call, the points of superiority in the measures adopted in 1961 over the measures adopted in 1958. Mohite's points of superiority are the result of an afterthought and are intended to wipe out the effect of damaging admission frankly made by Prabhakar.

I will now pass on to the events, which took place between the Divisional Commissioner's meeting and the setting up of the control room in the Corporation Building at 9 p.m. on the 11th July 1961.

## SECTION 15

## PRESS NOTE (Ex. 428)

It is the case for the civil authorities that Gokhale, Regional Publicity Officer, Poona, was called to the Council Hall soon after the meeting was over and instructed to issue a press-note. Prabhakar has stated that he and Mohite briefed Gokhale about the text of the press-note and Gokhale took down notes of the instructions given by them. Prabhakar has also stated that the idea of issuing a press-note occurred to him and Mohite after the conference was over. He admitted that the decisions arrived at in the Commissioner's meeting are embodied in the press-note. After the press-note was read over to him, Prabhakar admitted that the contents were correct. Mohite's evidence is on the same lines. Mohite added that he and Prabhakar gave an account to Gokhale of the proceedings of the meeting and the decisions taken therein. He further stated that he and Prabhakar were responsible for the contents of the press-note, because the press-note was issued under their directions. It is the case of both Mohite and Prabhakar that the text of the press-note was not prepared in their presence nor was it shown to them. Mohite explains that Gokhale told them that as it was already late, he would go home and prepare the press-note and give publicity to the same, and therefore, they authorised him to do so. When it was suggested to Mohite whether the reason why he did not insist upon Gokhale to prepare the draft of the press-note then and there was that, he (Mohite) was in a hurry, Mohite stated that it was true that he was in a hurry. But, that was not the reason for his non-insistence. Mohite asserted that since he had no reason to believe that the press-note would not be correctly drafted, he did not insist Gokhale to prepare it in his own presence.

Before proceeding to the contents of the press-note (Ex. 428), it is necessary to refer to Gokhale's evidence on this point. This is what Gokhale says (Ex. 570):

"I reached the Council Hall at about 8 p.m. on 11th July 1961. By that time, the conference was over. I was briefed by the Collector and the Commissioner. I made rough notes of the instructions given to me by the Collector and the Commissioner. I have not preserved them....  
.....There was discussion between me on one hand and the Collector and the Commissioner on the other and they gave me full authority to publicise the matter."

I will analyse the text of the press-note (Ex. 428). A photostat copy of (Ex. 428) is given below :





The matter contained in photographic reproduction on pages 199-200 is reproduced here in print :-

Ex. 428

मंगळवार, जुलै ११

रात्री ९ वाजता

पानशेट येथील मातीच्या घरणाचा कांही भाग खचला असून घरणांतील पाण्याची अुंची आणखी तीन फुटाने वाढल्यास पाणी घरणावरून वाहू लागेल व पुणे शहरातील सखल भागात १९५८ सारखा किंवा त्याहूनही मोठ्या प्रमाणावर पूर येण्याची शक्यता निर्माण होईल. या क्षणी घरणातील पाण्याची पातळी खचलेल्या भागाच्या ३ फूट खाली व इतर भागाच्या ६ फूट खाली आहे. खचलेला भाग भरून काढण्याच्या कामास सुरुवात झाली असून दगड, चुना वगैरे टाकण्याचे कार्य घरणावरील मजुरा-व्यतिरिक्त बॉबे जिजिनियरिंग ग्रुपच्या संपर्स व मायनर्स विभागाचे २०० जवान करीत आहेत.

पानशेट भागांत मागील रविवारी ८ अिच पाअुस पडला. काल तो ४ $\frac{३}{४}$  अिच होता व आज त्याचे प्रमाण १ $\frac{३}{४}$  अिचाहून ज्यास्त नव्हते. खडकवासला घरणांतील पाण्याची अुंची आज सकाळी ३१ फूट होती. ती सायंकाळी ३०.४ वर आली म्हणजे ६ अिचाने कमी झाली. पानशेट घरणांतून खडकवासला घरणांत येणाऱ्या पाण्याचे प्रमाण कमी झाले आहे हे यावरून स्पष्ट आहे. पानशेट घरणाच्या वेस्ट वियर्स मधून पाणी वाहात आहे. असे असले तरी सावधगिरीच्या दृष्टीने व जरूर पडल्यास पुराच्या संकटांस यशस्वीरीत्या तोंड देता यावे म्हणून शहरातील सखल भागात राहाणाऱ्या लोकांना सुरक्षित ठिकाणी हलविण्याची व्यवस्था केली आहे. हे सखल भाग म्हणजे नदी काठी असलेली पुलाची वाडी, सीताफळ बाग, मंगळवार पेठ, अमृतेश्वर, आशानगर, भीमपुरा वगैरे होत.

पुणे कॉर्पोरेशनच्या नव्या इमारती जवळ कॉर्पोरेशन, शेतकी खाते, बांधकाम खाते यांच्या १५ हून जादा ट्रक्स आवश्यक नोकरवर्गांसह तयार ठेवण्यांत आला आहे. सखल भागातील लोकांनाही जागरूक राहाण्याबद्दल सूचना देण्यांत आली आहे. खडकवासला व पानशेट या दोन्ही ठिकाणी बिनतारी संदेश केन्ट्रे उघडण्यांत आली असून पाण्याची पातळी वाहू लागल्यास किंवा मातीच्या घरणास धोका निर्माण झाल्यास संबंधित लोकांना तसा अिषारा देण्यात येतील. व तयार असलेले ट्रक्स व नोकरवर्ग या लोकांस सुरक्षित ठिकाणी म्हणजे जवळच्या अुंच भागांतील शाळांत हलविण्याच्या कामास सुरुवात करतील. धोक्याची पूर्व सूचना दोन तास अगोदर देण्यांत येतील. कारण पानशेट पुण्यापासून २१ मैलावर आहे व तेथून शहरापावेतो पाणी येण्यास २ ते २ $\frac{३}{४}$  तास लागतील.

पुण्याचे विभागीय कमिशनर श्री. मोहिते, जिल्हाधिकारी श्री. प्रभाकर, म्यु. कमिशनर श्री. कुलकर्णी, शहर डी. एस्. पी. श्री. हेवळे, बांधकाम खात्याचे अधिकारी वगैरेची संभाव्य धोक्याचा विचार करण्याकरिता बोलाविलेली बैठक आत्ताच

(रात्री ८-३० वाजता) संपली व धोक्याच्या परिस्थितीची व तीस तोंड देण्याकरिता निश्चित केलेल्या योजनेची जनतेस माहिती द्यावी असे ठरले. सखल भागात रात्रीच वायरलेस गाडी फिरवावी व संभाव्य धोक्याबद्दल अिषारा द्यावा असेहि या बैठकीत ठरले.

संपादकाच्या माहितीसाठी :—पानशेट व खडकवासला येथे उभारलेल्या वायरलेस स्टेशन्सचा संबंध भांबूडा येथील पोलिस हेडक्वार्टर्सशी असून Latest परिस्थितीची माहिती तेथून मिळू शकेल. तसेच असिस्टंट म्युनिसिपल कमिशनर श्री. दर्प व कलेक्टर कचेरीतील डेप्युटी चिटणीस हे रात्रभर फोनवर उपलब्ध आहेत. मी ही रात्री २-३० पावेतो फोनवर आहे.

Dictated to all Poona Papers and representatives of outside Papers, except that :—

- (i) Kesari office was closed and there was no response.
- (ii) P.T.I. office could not be contacted.
- (iii) No response from AIR, it being closed.

(Signed) .....





-2- 10699

पुण्याचे विभागीय कमिश्नर जी. गोविंदो, जिल्हाधिकारी, श्री. प्रभाकर, म्युनिसिपलर जी. सुब्रह्मणी, जय ही. एच. पी. श्री. बिबटे, बांधकाम खात्याचे अधिकारी कोल्हापूर येथील सौकर्याचा विकास करण्याकरीता कोल्हापूरचे वि. खा. ( रा. सं. ८-३० वा. कां. ) संघर्ष व बांधकाम खात्याच्या एम. ए. सी. व लोच गोड येथील बांधकाम - निश्चित केलेल्या बांधकामाची अर्जाबाबतची भावी जी ठरले, सख्त भागात लोच गोड बांधकाम गाडी फिरवाची व संपादन बांधकाम विभागात भावाबाबतची या ठरवित ठरले.

संपादनाच्या बाबतची बांधकाम - पानभेट व सडकबासता येथे उभारलेल्या बांधकामाचे स्ट्रक्चरचा लेव्ह भांडवळी मम येथील पोलीस, हेडक्वार्टर्सची मूल परिस्थितीची बाबतची लेव्ह वि. सं. अर्ज, व लेव्ह अडिस्टंट म्युनिसिपल कमिश्नर जी. डी. व कोल्हापूर - अर्जाबाबत लेव्ह वि. सं. अर्ज हे अर्ज फोनवर उपपत्ती वास्तु, या ही लोच २-३० पावेतो फोनवर आहे.

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428

Commission of Enquiry  
 4402  
 Commission of Enquiry

Commission of Enquiry  
 and report submitted  
 Files and records  
 Date & Name

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Copy to the  
 4402

The matter contained in photographic reproduction on pages 203-204 is reproduced here in print :—

Ex. 428

मंगळवार दि० ११ जुलै १९६१ रोजी रात्री ९ पासून पुढे पुण्यातील वृत्तपत्रांना व पत्र प्रतिनिधींना फोनवरून दिलेली माहिती :—

पानशेट येथील मातीच्या घरणाचा कांहीं भाग खचला असून घरणांतील पाण्याची उंची आणखी तीन फुटाने वाढल्यास पाणी घरणांवरून वाहू लागेल व पुणे शहरांतील सखल भागांत १९५८ सारखा किंवा त्याहूनही मोठ्या प्रमाणावर पूर येण्याची शक्यता निर्माण होईल. या क्षणी घरणांतील पाण्याची पातळी खचलेल्या भागाच्या ३ फूट खाली व अितर भागाच्या ६ फूट खाली आहे. खचलेला भाग भरून काढण्याच्या कामास सुरुवात झाली असून दगड, चुना वगैरे टाकण्याचे कार्य घरणांवरील मजुरा व्यतिरिक्त बांबे इंजिनियरिंग ग्रुपच्या सॅपर्स व मायनर्स विभागाचे २०० जवान करीत आहेत.

पानशेट भागांत मागील रविवारी ८ अंच पाऊस पडला. काल तो साडे चार अंच होता व आज त्याचे प्रमाण दीड अंचाहून जास्त नव्हते. खडकवासला घरणांतील पाण्याची उंची आज सकाळी ३१ फूट होती. ती सायंकाळी ३०.४ वर आली म्हणजे ६ अंचाने कमी झाली. पानशेट घरणांतून खडकवासला घरणांत येणाऱ्या पाण्याचे प्रमाण कमी झाले आहे हे यावरून स्पष्ट आहे. पानशेट घरणाच्या वेस्ट वियर्स मधून पाणी वाहात आहे. असे असले तरी सावधगिरीच्या दृष्टीने व जरूर पडल्यास पुराच्या संकटास यशस्वीरीत्या तोंड देतां यावे म्हणून शहरांतील सखल भागांत राहाणाऱ्या लोकांना सुरक्षित ठिकाणी हलविण्याची व्यवस्था केली आहे. हे सखल भाग म्हणजे नदी काठी असलेली पुलाची वाडी, सीताफळ बाग, मंगळवार पेठ, आशानगर, भीमपुरा वगैरे होत.

पुणे कॉर्पोरेशनच्या नव्या भिमारती जवळ कॉर्पोरेशन, शेतकी खाते, बांधकाम खाते यांच्या ५० हून जादा ट्रक्स आवश्यक नोकरवर्गांसह तयार ठेवण्यांत आला आहे. सखल भागांतील लोकांनाही जागरूक राहाण्याबद्दल सूचना देण्यांत आली आहे. खडकवासला व पानशेट या दोन्ही ठिकाणी बिनतारी संदेश केन्द्रे उघडण्यांत आली असून पाण्याची पातळी वाढू लागल्यास किंवा मातीच्या घरणास धोका निर्माण झाल्यास संबंधित लोकांना तसा अधारा देण्यांत येईल. व तयार असलेले ट्रक्स व नोकरवर्ग या लोकांस सुरक्षित ठिकाणी म्हणजे जवळच्या उंच भागांतील शाळांत हलविण्याच्या कामास सुरुवात करतील. धोक्याची पूर्व सूचना दोन तास अगोदर देण्यांत येईल. कारण पानशेट पुण्यापासून २१ मैलावर आहे व तेथून शहरापावेतो पाणी येण्यास दोन ते अडीच तास लागतील.

पुण्याचे विभागीय कमिशनर श्री. मोहिते, जिल्हाधिकारी श्री. प्रभाकर, म्यु० कमिशनर श्री. कुलकर्णी, शहर डी. एस्. पी. श्री. हेबळे, बांधकाम खात्याचे अधिकारी

बगैरेची संभाव्य धोक्याचा विचार करण्याकरिता बोलीविलेली बैठक आतांच (रात्री ८-३० वाजता) संपली व धोक्याच्या परिस्थितीची व तीस तोंड देण्याकरिता— निश्चित केलेल्या योजनेची जनतेस माहिती द्यावी असे ठरले. सखल भागांत रात्रीच वायरलेस गाडी फिरवावी व संभाव्य धोक्याबद्दल अिषारा द्यावा असेहि या बैठकींत ठरले.

संपादकाच्या माहितीसाठी :—पानशेट व खडकवासला येथे उभारलेल्या वायरलेस स्टेशन्सचा संबंध भांबूर्डा येथील पोलीस हेडक्वार्टर्सशी असून परिस्थितीची माहिती तेथून मिळू शकेल. तसेच असिस्टंट म्युनिसिपल कमिशनर श्री. दर्प व कलेक्टर-कचेरीतील डेप्युटी चिटणीस हे रात्रभर फोनवर उपलब्ध आहेत. मी ही रात्री २-३० पावेतो फोनवर आहे.

The heading, as rendered in English, runs thus :

“ Information conveyed on phone to the newspapers and their representatives from 9-00 p.m. onwards on the night of 11th July 1961.”

The first paragraph contains the following points :—

- (1) Certain portion of the earth dam at Panshet had subsided.
- (2) In case, the water in the reservoir rose to three feet higher, then the dam would be overflowed (overtopped).
- (3) As a result of the above, there would be possibility of floods coming in the lowlying areas which floods might be similar to 1958 floods or even far more bigger.
- (4) At the moment, the level of water in the sinking portion of the dam is three feet below the top and in other parts six feet below the top.
- (5) The work for reinforcing the sinking portion has been started and the task of dumping stones, chunam etc. is being done by 200 Jawans of Sappers and Miners Division of the Engineering Group in addition to the ordinary labour.

The second paragraph speaks of the rainfall on Sunday, Monday and Tuesday (9th, 10th and 11th July). It then refers to the height of water in the Khadakwasla dam as being 31 feet in the morning and 30.4 feet in the evening and explains that the level is lowered down by six inches. It then draws an inference from the above and states that this shows that the quantity of water coming from Panshet dam into the Khadakwasla dam has been lessened. It further refers to the fact that the spillway of the Panshet dam was flowing and then says :

“ Notwithstanding the above, by way of caution and with a view to face the danger of floods successfully, arrangements have been made for evacuating people living in the lowlying areas to safe places. These lowlying areas mean the areas on the banks of the river such as Pulachiwadi, Sitaphalbag, Mangalwarpath, Ashanagar, Bhimpura etc.”

The third paragraph states that fifty trucks belonging to different departments have been kept ready in the Corporation Building. It also states that people living in the lowlying areas have been warned to remain vigilant. It assures the people that wireless stations have been set up both at Khadakwasla and Panshet and through which information would be conveyed to the concerned persons in case the level of water started rising or in case the danger to the earth dam materialised. It also assures that the trucks that were kept ready with servants will start the work of evacuating the people to safe places i.e., places on a higher level. It then says that the warning of danger would be given two hours before and points out that the Panshet dam is 21 miles from Poona and water would take two-and-half hours to travel from Panshet to Poona. The fourth paragraph refers to the meeting convened by the Divisional Commissioner and states that to this meeting, S. B. Kulkarni, Municipal Commissioner and the P. W. D. officers were present in addition to the Commissioner, the Collector and the District Superintendent of Police, City. It further states that this meeting was over at 8-30 p.m. and it was decided that public should be informed about the plan of operations chalked out therein for facing the dangerous situation. It also refers to the decision in the meeting that a wireless van should move round the lowlying areas conveying warnings about the possible danger. I have already referred to the post-script, which is intended for the information of the editors, of this press-note in another context and it is not necessary to repeat the same here.

Some of the contents of this press-note, which was admittedly issued on the instructions from the Collector and the Divisional Commissioner, are unfavourable to the case that has now been trotted out on behalf of the civil authorities.

Not only does the press-note speak of the fact of subsidence of a portion of the Panshet dam, but it specifically points out that in case the water were to rise by three feet, the dam would be overtopped, as a result of which there would be floods similar in quantity to the floods of 1958 or even far greater than the floods of 1958. It is ridiculous to say in the same breath that, the floods that would be released by overtopping of the dam would be of the order of 1958, and again to say that, they would be far greater than the floods of 1958. This shows that the Collector and the Divisional Commissioner had not applied their mind to the real situation and to the extent of the possible danger. With reference to the efforts of reinforcement, the press-note makes a clear mis-statement saying that stones and chunam were being dumped. What was being dumped was cement bags filled with murum and not stones nor chunam. In the second paragraph, it specifically makes mention of the six localities, but, at the end of the mention of these localities, the word 'etc.' had been put. That word 'etc.' is sought to be exploited to the full and it is contended, on behalf of the civil authorities, that this shows that more than six areas were in contemplation of the authorities. Desperate attempts have been made by Mohite and Prabhakar to get out of some of the abovementioned inconvenient admissions contained in Ex. 428. (The statements made in Ex. 428 by Gokhale were made by him under instructions from Mohite and Prabhakar, and, therefore, they amount to their admissions.) Prabhakar offered the following explanation with a view to disown the responsibility of the contents of this document:—

“ I came to know about the press-note late in the evening on the 12th. The normal practice is that the authority, under whose directions press-note is issued, scrutinizes the report. He would either approve of the text submitted to him or he would make certain amendments. As we wanted to issue a press-note as quickly as possible, there was a departure from the normal practice. For a person who knows the language, ten minutes would be sufficient for scrutiny. For me to scrutinize a Marathi draft, it would take fifteen minutes. There is, no special reason beyond hurry for delegating the function of drafting, scrutinizing and approving the text of the press-note to the Regional Publicity Officer. I agree that perhaps, it would have been better, if I had scrutinized the draft of the note. We never told him that the work of dumping stones and murum bags was undertaken by the Bombay Engineering Group. . . . . I cannot explain how the statement, viz., that stones and chunam, were being dumped, has crept into the press-note. I do not accept either of the two alternative views about the statement put to me viz., (1) that I failed to ascertain the exact position from the irrigation officers or (2) that I gave wrong instructions to the Regional Publicity Officer. . . . . The statement that, stones and murum was dumped was purely due to lapse on the part of the Regional Publicity Officer. This is a mistake committed by the Regional Publicity Officer.”

Prabhakar's attention was then drawn to the letter written by the Regional Publicity Officer on 16th July 1961 (Ex. 440) along with which, he had forwarded a copy of the press-note as also the newspaper cuttings. In his letter, Regional Publicity Officer, Gokhale, stated that the press-note contained statement of facts given to him by the Collector. Prabhakar admitted that he did not point out to the Regional Publicity Officer that this statement was not correct or was not wholly correct. According to Prabhakar, this was not necessary. Prabhakar also admitted that he did not consider it necessary to point out to Gokhale that the press-note contained inaccurate statements. He further admitted that it was, for the first time, from the witness box that he was saying that the press-note contained inaccurate statements. He also

agreed that he was aware that there was a good deal of criticism in the press, after the failure of the dams, in regard to the contents of the press-note and also in regard to the failure or adequacy of the warnings given.

This is what Mohite says in regard to the contents of the press-note (Ex. 428) (Ex. 516):

“ I came to know about the contents of the press-note within a week after the floods. I read the press-note fully. I found that there were mistakes in that press-note. ”

After referring to the mistakes, Mohite stated that the last sentence in the second paragraph of the press-note cannot be said to be incorrect, because after mentioning the localities, the word ‘ etc.’ had been added. He then proceeds to say :

“ Either myself or Prabhakar must have mentioned the names of the localities. It is difficult to say whether we used the word ‘ etc.’ after mentioning the localities, viz., Pulachiwadi, Sitaphalbag, Mangalwarpeth, Ashanagar, Bhimpura. We did not mention any other areas by name except those stated in the second paragraph. Now I say, we must have used the word ‘ etc.’. I agree that the discretion of determining the other lowlying areas except those mentioned above and mentioning them in the press-note was given to Gokhale. We did not instruct Gokhale to use the word ‘ etc.’ after the localities mentioned above. We left it to him either to use the word ‘ etc.’ after the above-mentioned localities or himself to mention the remaining lowlying areas ..... After the lowlying areas are the words ‘ areas by and near the banks of the river such as Pulachiwadi, Sitaphalbag, Mangalwarpeth, Ashanagar, Bhimpura, etc.’. The press-note was intended for publication in the newspapers. This note would appear in the papers to be issued on the morning of the 12th. The Regional Publicity Officer was expected to send copies of the press-note to the various press people of Poona and elsewhere. ”

It would thus be seen that Mohite was anxious to dispose of certain contents of Ex. 428, which are unfavourable to him, as inaccurate. But, at the same time, he wanted to catch hold of the word ‘ etc.’ and try to make the best out of it. At one stage, he stated that he did not remember whether either he or Prabhakar used the word ‘ etc.’ after mentioning the localities. At a later stage, he made himself bold to say that he used the word ‘ etc.’. When the difficulty arising out of the use of the word ‘ etc.’ by him and Prabhakar was pointed out to him, he said that the discretion of determining the lowlying areas except those mentioned in the press-note, was given to Gokhale. In other words, it was left to Gokhale either to use the word ‘ etc.’ or to mention additional lowlying areas, as per his discretion. It is impossible to believe that any responsible officer would give such a latitude or discretion on a vital point to the Regional Publicity Officer. Mohite does not accept the simple inference that the use of the word ‘ etc.’ also may be inaccurate just as there are so many other inaccuracies committed by Gokhale in drafting the press-note.

Let us now see as to what Gokhale, Regional Publicity Officer, Poona, has to say on the point. According to Gokhale the only inaccuracy in the press-note (Ex. 428) was about the names of the officers mentioned by him as having attended the conference. He added that this inaccuracy was noticed by him and he informed the editors accordingly with the result that no newspaper mentioned the names of the P. W. D. officers or of S. B. Kulkarni as being among those who attended the meeting. He admitted that this statement was not based on the information conveyed to him by the Collector or the Commissioner. He explained that, as he was stepping into the office room, he

saw the D. S. P. going out. He, therefore, inferred that the Municipal Commissioner and the P. W. D. officers must have attended the meeting and had left the hall earlier. He also asserted that the Collector and the Commissioner did tell him that stones and chunam were being dumped. There is some substance in this statement of Gokhale, because if we refer to the letter (Ex. 94) written by Mohite to Bedi, we would notice that Mohite stated that the nature of work was to fill up empty cement bags with stones and dump them in the portion of the dam, which was sinking. Neither Mohite nor Prabhakar have repudiated the statement contained in Ex. 94. On the other hand, they explained that that statement was based on the information given to them by the engineers.

I will now turn to what Gokhale says about Mohite's extraordinary explanation regarding the word 'etc.' after mentioning the six localities in the press-note. This is what Gokhale has to say (Ex. 570) :

"It was the Collector, who mentioned Pulachiwadi, Sitaphalbag, Mangalwarpeth, Amruteshwar, Ashanagar, Bhimpura as the lowlying areas. I do not know some of these areas even now. The Collector used the word 'etc.' after mentioning the five areas stated above. I did not ask him what other areas he had in mind, when he used the word 'etc.'. The Collector and the Commissioner were holding discussions between themselves as to which were the lowlying areas. They arrived at the five areas mentioned above. But, they were uncertain as to the remaining areas. That is why the Collector suggested the word 'etc.', which I had used in the news-item."

It is interesting to note that the Regional Publicity Officer who had admitted that he did not know some of these areas even now was asked by Mohite to mention the remaining lowlying areas. But apart from that I cannot understand why Gokhale was not asked to write the words "and all other lowlying areas", after mentioning the six localities, if that was the decision taken in the meeting. Nor can I understand why the Collector and the Commissioner should go on discussing the question as to which were the lowlying areas, after the meeting was over and when already a decision was taken that warning was to be given to all the lowlying areas, which question was left to be decided by the District Superintendent of Police, Regional Publicity Officer and the Municipal authorities. It is also difficult to understand why the Regional Publicity Officer was not asked to contact the District Superintendent of Police and the Municipal authorities for determining which were the other lowlying areas besides the six traditionally lowlying areas. Incidentally, this part of Gokhale's deposition saying that a discussion was going between the Collector and the Commissioner, for determining which were the lowlying areas, exposes the falsity of the boastful claim made by Heble that every man in the street knows which are the lowlying areas in Poona. I do not think that the use of the word 'etc.' in any way helps the civil authorities in the contention that they are now advancing viz., that it was decided in the Divisional Commissioner's meeting that warnings should be given to all the lowlying areas.

It is significant to note that the press-note was, admittedly to the knowledge of Mohite and Prabhakar, to be published in the newspapers appearing on the 12th July. According to the theory brought up by the civil authorities they were given to understand that there was danger to the dam only during night time and as soon as the night passed off, the dam would be safe. Had there been any truth in this theory, then the Collector and the Commissioner would not have bothered to call Gokhale and give him special instructions for the issue of the press-note (Ex. 428). On the other hand, the publication of the press-note on the 12th July would have created panic in the minds of the people, when the dam was beyond danger according to these officers. Gokhale



himself has stated that the publication of the press-note would not have been of any use in case the disaster were to occur on the night of the 11th July. I would only add that nor would it be of any use, in case the disaster had not occurred on that night.

The substance of the press-note (Ex. 428) came to be published in almost all Poona and Bombay newspapers. This news, obviously, had become stale, because the Panshet dam was overtopped in the early hours of the morning of the 12th July 1961. If the Divisional Commissioner and the Collector were sincere in conveying information to the people about the impending danger during the night time, they or either of them would have called a press conference either before the Divisional Commissioner's meeting or soon thereafter and explained the situation to the press reporters. They could also have requested the press reporters to issue special editions giving publicity to the impending danger at Panshet. The best thing for Mohite and Prabhakar to do was to inform the Poona Station of the All India Radio and ask it to broadcast the news regarding the happenings at Panshet. As it is, the press-note (Ex. 428) has become an empty formality.

## SECTION 16

ARRIVAL OF MANERIKAR BY THE DECCAN QUEEN AT 8-30 P.M. ON THE  
11TH JULY AT POONA

Considerable reliance has been placed on behalf of the civil authorities on the circumstance that no steps were taken by the engineers after the arrival of Manerikar, Additional Chief Engineer, and that actually Manerikar asked the two Superintending Engineers to go home and take rest. According to them, this circumstance indicates that the situation at Panshet was quite safe. In this connection, it is pointed out that the two Superintending Engineers, who paid a second visit to the Panshet dam in the afternoon of the 11th July, did not even care to cross the spillway channel to see the conditions for themselves, but remained contented by getting information from Kanaglekar (Ex. 220). It is, therefore, suggested that the information that they (the engineers) received must have been 'all well' and that the same information must have been conveyed to Manerikar. To reinforce this argument, it is pointed out that the information that was supplied to Desai and Khursale at the time of their afternoon visit was conveyed by Kanaglekar in writing and that writing is suppressed. For this reason and also for the reason that Manerikar's arrival comes next, after the instructions were given to Gokhale, Regional Publicity Officer for issuing the press-note, in the chronological order, I will now take up the topic about Manerikar's arrival and what transpired thereafter. Kanaglekar wrote out a message on a piece of paper and handed it over to the Deputy Engineer Joshi (Ex. 218) and it was the latter who gave that chit to Desai, who was standing at the other end of the spillway channel. Bhalerao, in his deposition (Ex. 232) has explained as to what information was given to Kanaglekar. Bhalerao says:—

"Kanaglekar asked information about the level of the water and the level of the embankment. I supplied that information to him. He was to communicate that information to Desai and Khursale. Kanaglekar had himself seen that the work of bag-stacking was proceeding. It was not necessary to inform Kanaglekar that the sinking was continuing, because that was assumed by everyone."

Kanaglekar, in his deposition (Ex. 220) says :

"The latest information was to the effect that the level of water was at 2067 and the height of the dam was standing for some time at 2072. I conveyed this information through Deputy Engineer Joshi. The message I conveyed was sent in writing. I do not think that the message I sent carried the implication that the situation was not grave. The situation continued to be what it was for some time. The message I sent was 'the water level was at 2067 and the top of the sand bags was at 2072 and had remained constant for a while'. By the expression 'had remained constant for a while' I mean that the top of the sand bags had remained constant for about half an hour. Although I have said that the top remained constant at 2072, I mean that the top was being maintained at that level by continuously and ceaselessly laying down the sand bags on the sinking portion. I did not mean to convey that the situation had stabilised. I do not remember whether I used the words 'the top of the sand bags had remained constant at 2072' in the written message. I wanted to convey that it was being maintained at constant level..... The situation continued to be grave but I thought that it had not deteriorated."

(The quotation is not continuous).

In emphasizing the words, such as 'remained constant' and 'for a while', one must not forget that this was the message sent by one engineer to the other engineer. Each of them knew that the dam was sinking; that the process of sinking had not stopped and that an attempt was made to raise the level of the sinking portion by dumping sand bags. Even if the word 'stabilised' is used, that word would be interpreted by the engineers to whom it was conveyed in the context of the situation. I will make my further comments on this aspect of the matter at the end of this part of the discussion. In the meantime, I will proceed to the evidence of G. K. Joshi (Ex. 218). In his written statement at (Ex. 219), he only spoke about his attempts at collecting the cement bags as per the instructions of Bhalerao. No question was asked to him in his cross-examination on behalf of the civil authorities, as to what was contained in the chit, which Kanaglekar gave it to him for being handed over to Desai. It may also be pointed out that even Kanaglekar was not cross-examined about the contents of this jotting. The question about the contents of the chit was raised, for the first time, during the cross-examination of Desai, the recipient of the chit. In answer to questions by Mr. Ghaswala, Desai stated (Ex. 772) :

"We, however, got information about the latest development at Panshet from Kanaglekar. Kanaglekar sent over a chit which contained the latest information. The chit in part contained the following :—

'The level of the water stood at 2067 and the embankment at 2072 and this position remained constant for a while.'

The chit also contained a message about securing empty cement bags. I have not preserved that small chit. It was scribbled on a small paper, and not worth preserving. I do not remember whether I threw it away at that moment or put it in my pocket. I did not pass over the chit to Khursale. I did not show the chit to Manerikar. I am asked to say whether the chit contained the following :—

'Gauge at 6-15 p.m. is 2067, that is, practically constant.'

The level 67 was mentioned in the chit. It did say that the lake level at 2067 was practically constant. The chit also stated that there was no further sinking of the portion of the embankment, where the bags were stacked at that time. I cannot say whether the words 'at that time' were mentioned in the chit.

Q. I (Mr. Ghaswala) put it to you that you are forgetting that as a matter of fact, you had shown the chit to Manerikar on the night of the 11th and you are unnecessarily emphasizing that you are sure that you did not show it ?

A. I am sure that I did not show it to him and there is no question of forgetfulness on this point.

Q. I put it to you that the chit also contained the following :—

'At Poona you will get the information at Phone No. 6190 (Police Headquarters). Wireless will be working shortly ?'

At this stage, I asked Mr. Ghaswala whether he had the chit with him and whether he intended to produce it in the cross-examination. Mr. Ghaswala stated that he did not possess the chit. I then asked him as to how he came to know the contents and whether he had access to the chit. He replied that he had no access to the chit nor had he read it, but he was asking the question on instructions from one of his clients. Desai's answer to the above question was :

- A. "Information about the telephone number was contained in that chit."

Desai added that he did tell Manerikar that the situation at Panshet was extremely grave and that the dam might breach at any time. He further stated that he gave all the details about the developments at Panshet.

Manerikar was asked, on behalf of the civil authorities, to state the substance of the conversation that took place between him and the two engineers on his arrival at the Poona Railway Station. Manerikar stated that he had set out the substance of that conversation at paragraphs 13 and 14 of his written statement (Ex. 664), but added that all the details had not been set out. Mr. Ghaswala then asked him to say which parts he had omitted and Manerikar stated (Ex. 663):

"I have not set out the conversation that took place between the Collector and the two engineers in the course of which, the Collector said that he was alerting the people within the zone of half a mile or so and also the statements made by them to the Collector, viz., that they were making an attempt to save the dam which was in danger, but they were not sure of it. Further, I have not also set out the talk that took place between the engineers regarding the danger to the Khadakwasla dam. I have also not set out the fact, which was mentioned by the two engineers that the floods as a result of the possible breach of the Panshet dam would be of an unprecedented character ..... I say that I have not set out anything about many technical matters that we discussed in our conversation in paras. 13 and 14 of my written statement. The two engineers had given me the detailed account of the observations made by them in the afternoon. The engineers did tell me the latest development as they knew it in the evening about the situation of the Panshet dam."

Manerikar was then asked to state what was the substance of the report given to him by the two engineers as a result of their second visit to the Panshet dam and Manerikar replied as follows:—

"They told me that they had themselves not visited the dam. They told me about the lake level. Desai told me that momentarily, the level of the bags stacked was static. They told me that, at the moment, they left, the level there was stationary. I did not ask them nor did they tell me how long the static conditions prevailed. They mentioned, however, that the danger to the dam was still there and the bag-stacking operations must be carried out vigorously."

Then what followed was recorded in the form of question and answer and is set out below:—

Q. Did the two engineers tell you that the lake level was constant and no further sinking had taken place according to the latest report?

A. Yes. I agree that they said this. The engineers told me that—they had obtained latest information from Kanaglekar, engineer. I do not remember whether they showed me any note purported to have been written by Kanaglekar."

At an earlier stage, in answer to questions by the Commission's counsel about the talk he had with Desai on the Railway Station, Manerikar stated (Ex. 663):

"At that time, Desai reported to me that the top of the embankment where there was settlement noticed earlier was stationary for the moment. He told me that the sinking of the dam at that portion had stopped at the time when he left Panshet."

In answer to the Commission's questions, Manerikar stated :

" Desai told me that the work of bag-stacking was still going on with the aid of available personnel. Desai did not mention the point of time, when the sinking had stopped. I did not ask him the exact point of time when the sinking had stopped. I consider that such an enquiry was important from an engineering point of view. I did not ask him the reason why he concluded that the sinking had stopped.

Q. Supposing that you are working at the dam and a settlement is taking place. Supposing further that simultaneously bag-stacking operations are going on. How do you infer that the settlement has temporarily stopped ?

A. If by laying the bags we are able to restore the free-board to that extent, then we may conclude that the raising is not outstripped by the settlement.

Q. Supposing that the rate of stacking the bags is very fast and several persons are engaged in bag-stacking and the process of sinking is slow as a result of which those engaged in the operations succeed in building up some free-board, does that by itself give an indication that sinking has come to an end ?

A. No.

Q. When Desai told you that the sinking had come to an end, were you satisfied about the implications about what he said ?

A. I was only satisfied that it was worthwhile making an attempt to continue the bag-stacking operation."

We cannot lay stress on a stray word here and there *viz.*, the level was stationary or static or that it was momentarily stabilised, but we have to take an overall view of all the answers given by Manerikar in trying to understand his appreciation of the situation, which in its turn, was based upon the appreciation formed by the local engineers. The most important point to be noted is that, according to Manerikar, there was a race between sinking and raising the embankment by dumping sand bags and the question always was whether the rate of sinking outstripped the rate of raising the embankment by dumping the sand bags. Manerikar has rightly pointed out that when he heard Desai's report that momentarily or for the time being the embankment was stationary, he understood him to mean that for the time being, the rate of sinking had not outstripped the rate of raising the embankment.

Unnecessary fuss has been made as to what was contained in Kanaglekar's chit. Kanaglekar (Ex. 220) was not challenged upon the correctness of, what according to him, were the contents of the chit. No question was asked to Padhye who arrived in Poona with Manerikar regarding the chit. Also no question was asked to Khursale about the same. Deputy Engineer Joshi (Ex. 218), the carrier of the chit, was not asked a single question on this point. Desai did admit that the chit stated that the situation had stabilised for the time being. He was challenged about his memory only about the words 'for the time being'. Of course, he said that he did not remember whether those exact words appeared on that chit. But, that is neither here nor there. Even Manerikar's evidence does not support the contention, which according to him, was based on a misconception about the engineering terminology and

its implications. It is surprising that the advocate on behalf of the civil authorities, should lay emphasis upon what he considers as non-examination of Deputy Engineer Joshi, carrier of the chit, and on that basis has proceeded to draw an inference that the contents of the document are not fully or properly disclosed. As stated above, Joshi, Deputy Engineer, has been examined (Ex. 218) and no questions were asked to him on that point. But, in my view, the entire argument on behalf of the civil authorities is based on a misconception about the significance of the process of sinking and the process of stacking bags and what these really convey to an engineer. Khursale, in his deposition (Ex. 472) has made it clear that he and Desai conveyed a sort of engineering report to Manerikar and conveyed all the symptoms and the details of the situation at the dam. He further says :

“ We did inform Manerikar that the situation was grave. I again say that I do not remember whether I used these words. I was certain, however, that from our talk, Manerikar did gather the impression that the situation was grave .”

With regard to the information that was conveyed by Kanaglekar's chit, Khursale asserted :

“ It was not reported that since the bag-stacking operation had continued, the sinking had stopped .”

It would thus be seen that two things were clear viz., (1) bag-stacking operations were ceaselessly going on and (2) although the level of the embankment had remained constant for a while, nobody ever regarded that the sinking had stopped. The main aspect, which requires to be grasped, in this regard is, whether the rate of sinking outstripped the rate of bag-stacking or whether as a result of bag-stacking, the embankment was being raised to higher and higher levels. When it was said that the level of the embankment remained stationary for a certain period of time, all that it meant was that the progress in the work of laying down the sand bags was continuing satisfactorily and that it was keeping pace with the rate of sinking. It could never be an indication that sinking had stopped. If sinking stopped, but the bag-stacking operations continued, then the embankment would not remain stationary but it would go higher and higher. It seems clear from Prabhakar's report dated 2nd August 1961 (Ex. 438) that he had grasped the full significance of what is stated above. The following sentences in his report (Ex. 438) are very significant :

“ The military and the P. W. D. personnel worked continuously and carried out the operations of piling up the bags on the sinking portion throughout the night. *For the major part of the night, the rate for keeping the dam level above the water level was maintained ; but at 6-50 in the morning, the rate of raising was outstripped by the rate of settlement and the dam was overtopped.*”

These words are pregnant with meaning and sum up the entire situation both from the point of a layman and also of an engineer. Prabhakar was cross-examined on some of the contents of Ex. 438 by the Senior Advocate on Record on 6th April 1962 and the only explanation that he offered in regard to these contents was that, there were omissions in the report, because these omissions crept in as he was busy with the flood relief operations. During the cross-examination by Mr. Ghaswala, which took place on 11th April 1962, it was elicited from Prabhakar that the report (Ex. 438)

dated 2nd August 1961 was not prepared in his office at all and that three or four persons were working on the same. According to Prabhakar, these persons were :

“(1) Mr. Barve. (2) The Divisional Commissioner and (3) myself.”  
He then proceeded to state :

“Mr. Barve prepared the introductory paragraphs upto the paragraph beginning with the words ‘efforts made by the Engineering authorities of the Panshet since the evening of 11th of July’, and ending with the sentence ‘If the dam had breached during the night of the 11th and 12th July, the devastation and loss of life would have been immense’. The subsequent big paragraph, which ends with the sentence ‘the other bridges connecting the two parts of the city, however, were damaged beyond possibility of use’, was prepared by me and Mohite in collaboration. The subsequent portion till the end was again prepared by Mr. S. G. Barve. The original of Ex. 438 was sent by the Divisional Commissioner to the Private Secretary to the C. M. for the use of the C. M. Mr. Shahane, the Additional Collector, converted the note into a report without my knowing about it and he sent it to the Government along with the forwarding letter.”

In view of these extraordinary statements, the Commission had to intervene, and in answer to the question by the Commission, Prabhakar stated :

“I am speaking about the part played by each of the three persons, viz., Barve, myself and Mohite, from memory. There is nothing on record to support my contention in this regard.”

In answer to further questions by Mr. Ghaswala, Prabhakar stated :

“The original drafts prepared by Barve are not in the records of the Collector. I have made no note anywhere recording as to how many paragraphs and which were drafted by Barve and how many by myself and Mohite.”

It is thus clear that Prabhakar was trying to mention Barve's name, as being the author of the introductory part, with some ulterior object. It is impossible for anyone to remember which part was prepared by whom, particularly when he is asked to make a statement on that point, after a lapse of several months. Even so, Prabhakar did not have the courage of denying the correctness of the paragraph alleged to have been prepared by Barve. If he wanted to repudiate the particular sentences, on which I have relied above, he should have boldly stated that the statement made by Barve was incorrect or, at any rate, that it did not embody his understanding of the Panshet situation. In view of this peculiar situation, the Commission called for supplementary statement from Barve, which statement has been exhibited, with the consent of the advocate on behalf of the civil authorities at Ex. 824. Barve has denied his contribution to the making of that report (Ex. 438). He, however, stated that as far as he could recollect, the last portion in the text of the report commencing from the paragraph “The Chief Minister had arrived by plane at Poona about 4 p.m. etc.” and ending with “It is hoped that there would be adequate response to this call” was his contribution. As regards the first portion of the report already mentioned above, Barve states :

“I recollect having contributed some of the information about certain facts especially relating to the engineering aspects of the Panshet dam and the flooding of the bridges, which were known to me having been mentioned to me by the engineer officers. Information regarding consultations

between the civil engineering officers and revenue authorities calling in the military, communication of messages, etc. was not within my personal knowledge. I have no recollection as to how far I actually contributed to the drafting apart from supplying my appreciation of the situation and the information in my possession."

Barve then added the following :—

"In any case, I think I made it quite clear at the time that the report to be sent was an official report to be made by the officers concerned, any consultations with me being informal."

A good deal of ingenuity has been exercised in splitting up the report into three parts and attributing different parts to different persons. The ingenuity borders on cunning, but for the fact that the game was immediately exposed first when Prabhakar had to admit that he was speaking from memory, and secondly, when Barve's supplementary statement (Ex. 824) was received and was allowed to be exhibited without the need of examining Barve. What Barve has said in the last paragraph of his supplementary statement is the crux of the matter. The report was an official report and whoever might have played some part in its drafting, when the report is sent as an official report with a covering letter signed by the Additional Collector from the Collector's office, the Collector must be deemed to have subscribed to all the contents of that report. As stated above, Prabhakar never disputed the contents of the report at Ex. 438. Prabhakar's attempt at ascribing authorship of the first part to Barve, does not minimise the importance of the statements contained therein, which clearly show that Prabhakar had appreciated the situation in a very correct way viz., that the crux of the matter was to consider whether the rate of sinking outstripped the rate of settlement.

I will now set out the conclusions that follow from the above discussion :

(1) It is wrong to suggest that the report given to Manerikar on the basis of the observations made by the two Superintending Engineers at the dam site in the morning of the 11th July and also on the basis of the information gathered by them at the time of their second visit including Kanaglekar's note, indicated that danger to the Panshet dam was averted. Nobody had ever said that the sinking had come to an end. On the other hand, everyone says that the bag-stacking operations were going on continuously as a result of which, the level of the embankment was stabilised for the time being. Either the civil authorities and their advocates have not understood the significance of these statements or they are pretending that these statements indicated an improvement in the situation. The second alternative is more probable, because the statements in Ex. 438 clearly show that Prabhakar had clearly appreciated the situation.

(2) Again, the argument that, had the situation continued as it was or had it deteriorated, information would certainly have been given to the civil authorities in regard to the same either before or at any rate, after Manerikar's arrival. It is not the case for the engineers that there was any deterioration in the situation in the afternoon. Their case is that the situation continued to be as grave as it was. The engineers, therefore, must have felt, as indeed Manerikar tells us that he felt, that it was not necessary to convey any information to the civil authorities, because there was nothing new to report to them. Since no information was given to the civil authorities either in the evening or at night, the appreciation made by the engineers would not affect the measures devised by the civil authorities. Indeed, it is



the case for the civil authorities that they proceeded on the footing that worst would happen during the night time and were preparing themselves for that eventuality. It is sufficient to refer to Heble's statement in that regard viz.:

“ We visualised the possibility of the floods coming even during the night of the 11th July. We were making preparations to meet that possibility. Our arrangements were intended to be put in operation during night time in case it was necessary.”

Although the claim that arrangements were made for meeting the situation arising out of the breach of the Panshet dam is tall, still it reflects upon the understanding of the civil authorities about what they regarded to be the condition at Panshet.

(3) There is really no significance so far as Kanaglekar's message is concerned. It is an admitted fact that it was not communicated to the civil authorities. Moreover, they already knew that the dam was in danger and they were expected to take measures on the basis of that information.

*Activities of Manerikar and Padhye after their arrival in Poona  
at 8-30 p.m. on the 11th July.*

It may be mentioned that Manerikar came along with Padhye to Poona by the Deccan Queen. It may also be pointed out that Padhye (Ex. 130) was not cross-examined with reference to the Kanaglekar's chit. After their discussion at the Railway Station, Manerikar and Padhye proceeded to the Inspection Bungalow along with Desai and Khursale, Manerikar has stated that his discussions with the two Superintending Engineers continued even after the party had arrived at the Inspection Bungalow. What is significant here to note is that, although the civil authorities knew that Manerikar was to arrive by the Deccan Queen on that day, no attempt was made to contact him. It was really necessary for the civil authorities to contact Manerikar, because according to them the Superintending Engineers had not given any information regarding the extent of floods. They knew that Manerikar was arriving in Poona by the Deccan Queen and that he was the superior officer of both Desai and Khursale. If Desai and Khursale did not give any information regarding the extent of floods then I believe the civil authorities would have certainly contacted Manerikar, apprised him of this fact and sought his guidance. The very fact that they did not contact Manerikar would go to show that Desai and Khursale had given sufficient information regarding the extent of floods to the civil authorities. Although, it was primarily the duty of the civil authorities to contact Manerikar. I feel that Manerikar would have done well, if he had contacted either the Collector or the Commissioner on his own. Probably, the bureaucratic sense of prestige came in the way on either side. Manerikar has offered a feeble explanation and it may be considered for what it is worth. When cross-examined on this point, Manerikar stated (Ex. 663):

“ I did not contact the Collector, after my arrival in Poona. I did not try to contact either the Collector or the Commissioner during the night of the 11th July. I was told by Desai that the danger of the Panshet situation was explained to the Collector. I was told by Khursale that the Collector had made arrangements for alerting people within four furlongs on either side of the river and that he (Collector) had also made arrangements for trucks for evacuation. As I was more concerned with taking immediate steps for continuation of the work at the Panshet dam and see the conditions prevail-

ing there, I could not think of contacting the civil authorities. I also felt that they would ring me up during night time in case of necessity because they knew that I was to arrive by the Deccan Queen."

What is more surprising is that the civil authorities did not contact either Manerikar or the Superintending Engineers even for the purpose of informing them that a control room was set up in the Corporation Building. Ordinarily, they should have asked Desai or Khursale to remain present in the control room for the whole of the night of the 11th to receive messages. It is the case for Mohite that Desai was to be the liaison between the military engineering group and the civil authorities and that all messages were to be sent to Desai. I will deal with this aspect of the matter at a later stage. At any rate, Desai's presence would have helped so far as wireless messages are concerned, because there would have been no difficulty in communicating the messages emanated from the engineers at Panshet to Desai, who was their superior. As would be pointed out later, none of the engineers knew that the Collector and the Municipal Commissioner were sitting in the control room in the morning of the 12th July and they could not locate the Collector for delivering a very vital message, which remained undelivered for want of mutual communication. This again, reflects upon the very indifferent attitude adopted by the civil authorities. It may, perhaps, also reflect on the genuineness of the claim now made that a control room, in the real sense of the term, was set up in the Corporation Building on the 11th night.

It is an admitted fact that Desai and Khursale left the Inspection Bungalow at 10-00 p.m. Desai, in his written statement (Ex. 773) stated that the Additional Chief Engineer asked them (himself and Khursale) to go home as they had already made two trips in the day and asked them to go to Panshet dam next morning. Khursale explained, in answer to questions in cross-examination that, sometime after going to the Inspection Bungalow at about 10-00 p.m. Manerikar permitted them (himself and Desai) to go home. At the same time, Manerikar added that they should keep themselves ready for any work during night time and that he would send for both of them in case of necessity. He admitted that he did not remember if Manerikar told them that since they were tired, they might go home. He also admitted that he was not called by Manerikar during night time for accompanying him to the dam site. It is the case for Manerikar that he had decided to go to Panshet dam that very night (11th July). It is argued on behalf of the civil authorities that had there been any truth in this case, Manerikar would not have allowed Desai and Khursale to go home. Desai, in answer to questions in cross-examination (Ex. 772), stated that Manerikar and Padhye were to go to the dam site that night and he knew about it. According to him, that was the reason why Manerikar asked them to go to the dam site early next morning. He admitted that they had not told him the exact time of their departure. Both Manerikar and Padhye have stated that they started to go to the Panshet dam and went as far as the vehicles could go. Before going, they had sent a message to Panshet from Poona (Ex. 316) at 23-50 hours (11-50 p.m.). That message was to the following effect :—

"Please let me know immediately whether the raised portion of sunken dam has been stabilised. If so, at what level. Also state how the work is progressing and what is the latest level. I am starting for Panshet on the receipt of your reply."

The fact that Manerikar sent a message indicates that he knew that a wireless station at Panshet was installed and that he could send a message through the wireless control stations at Poona. This means that Desai had told him

about the same and had also given him the phone number. This was mentioned in the chit. The phone number and the fact that wireless station would be working shortly must have been mentioned in the chit sent by Kanaglekar. Obviously, therefore, Desai has apprised Manerikar about the same. If that is so, then the rest of Desai's evidence in regard to the chit must be held to be good evidence. No reply was received for some time and, therefore, Manerikar and Padhye started on their journey to Panshet but stopped at a certain point. They waited for a messenger, who would guide them to the ropeway crossing but nobody came. After waiting for about half an hour, they started on their return journey. On their way, they stopped at Khadakwasla and enquired as to whether there was any wireless message for Manerikar. A message (Ex. 375/6) was received there and it is to the following effect :—

“Sunken portion is stabilised at R. L. 2070. The work of laying sand bags is in progress. Lake level is R. L. 2067.4. As vehicles cannot directly come to colony, you are requested to start in the morning to Panshet.”

The fact that Padhye and Manerikar embarked on a journey at the odd hour of the night receives full corroboration from Manerikar's message (Ex. 316) in which he had stated that he would start for Panshet on receipt of Bhalerao's reply, and from the circumstance that Padhye received the message (Ex. 375/6) at Khadakwasla. It is in evidence that this message first went to Poona and was then diverted back to Khadakwasla. It is, however, argued for the civil authorities that since Manerikar did not start for going to Panshet immediately after reaching the Inspection Bungalow and that he sent a message to Bhalerao and was awaiting instructions from him before embarking on a journey, is indicative of the fact that Desai and Khursale must have informed him that the situation at Panshet had improved or, at any rate, remained stationary. There is no substance in this line of reasoning. Had Desai and Khursale told Manerikar that the situation at Panshet had improved or that the situation had stabilised, there was no necessity for Manerikar to send the message to Bhalerao at all. Manerikar wanted to know the latest position and, therefore, originated the message at (Ex. 316). It would not take much time for the receipt of reply from Bhalerao. Therefore, it would not have made much difference whether Manerikar and Padhye started immediately after their return to the Inspection Bungalow or started after the receipt of Bhalerao's reply. Their anxiety to go to the dam was clear from the message (Ex. 316) sent by Manerikar. It is further argued that the fact that Manerikar allowed Desai and Khursale to go home shows that, according to the reports received by Manerikar, the situation at Panshet had come to be stabilised. There is no substance in this line of reasoning as well. It was not necessary that Desai and Khursale should accompany Manerikar at night. Desai and Khursale were working from the early hours of the morning till 10-00 p.m. on the 11th July. It is perfectly natural that they were tired and it is not surprising that Manerikar, having appreciated that position, would ask them to go home, only warning them that they would be called in case of necessity. It may be noted that both Desai and Khursale were available on the phone.

That takes me to the significance of Manerikar's message (Ex. 316) and Bhalerao's reply (Ex. 375/6) thereto. In his message at Ex. 316, Manerikar raised the first question as to whether the raised portion of the sunken portion of the dam had been stabilised. This shows that he was anxious to know whether the progress that was attained by the bag-stacking operations was maintained. This is sufficient to show that he was not sure whether the position had remained static or stationary. The second query made by him was,

at what level the dam had stabilised. This also shows that Manerikar was not sure whether the level at which the sinking portion had stabilised had continued to remain the same or whether it had gone down. The earlier report was that the water-level stood at R. L. 2067 and the top of the dam at 2072. There was no certainty that this level would be maintained and that is why Manerikar raised the second query ; which also negatives the theory put forward on behalf of the civil authorities that the engineers knew that the conditions were satisfactory at Panshet. The third question asked by Manerikar was whether the work was progressing and the fourth question was, what was the latest level ? These questions speak for themselves and in no way support the theory that has been trotted out on behalf of the civil authorities. That takes me to the reply (Ex. 375/6) received by Manerikar from Bhalerao. The first sentence of the reply showed that the sunken portion of the dam had stabilised at R. L. 2070. The second sentence speaks of the fact that the work of laying sand bags was in progress. The third sentence indicates the lake level, which was at 2067.4. Here again, although the word 'stabilised' had been used, it is significant that the level of the sinking portion of the dam had come down from R. L. 2072 to 2070. Too much, therefore, cannot be read in the word 'stabilised' and all that the word indicated was that, at the moment when the message was sent, the level of the sunken portion stood at R. L. 2070. Bhalerao has explained the meaning of that message in these terms : (Ex. 232)—

“ I deny the suggestion put to me that the sentence ‘ the sunken portion is stabilised at R. L. 2070 ’ indicates that the sinking had stopped. The sentence only means that at that time, we were in a position to stack bags at the same rate as that of sinking. ”

Manerikar has explained his understanding of the message in the following words (Ex. 663) :—

“ When I received the message (Ex. 375/6) I did not think that the dam was safe. The message did not indicate any improvement in the situation at Panshet, nor did it indicate that the situation was under control. On the other hand, it did indicate that the situation had deteriorated. The earlier report indicated that the level of the subsiding portion was R. L. 2072, whereas this report indicated that the level was R. L. 2070. This was a clear indication of the deterioration. I understood the message to convey the impression that the free-board was reduced to about three feet. I did not understand the reply to mean that the sinking had stopped. I regarded the situation at Panshet more serious than before. ”

It may also be noted that Kanaglekar's chit had shown the level of water at 2067 whereas Bhalerao's reply showed the level of water at 2067.4. It is thus clear that the argument advanced on behalf of the civil authorities is far-fetched and futile. As a matter of fact, the whole argument is irrelevant, because it is nobody's case that any communication was sent conveying the substance of these messages to the civil authorities, nor is it anybody's case that these messages affected the programme chalked out by the civil authorities. Some comment is also made upon the last sentence in Bhalerao's reply (Ex. 375/6) asking Manerikar to go to Panshet in the morning and it was suggested that this is indicative of the fact that, according to Bhalerao, the situation had improved. This argument is devoid of any substance. In the last sentence of the message itself, the reason, why Bhalerao was asking Manerikar to go in the morning, has been mentioned and that was that, the vehicles could not go to the colony.

## SECTION 17

## THE WORK DONE BY CIVIL AUTHORITIES ON THE 11TH NIGHT

It is the case for the civil authorities that the control room started functioning in the Corporation building from about 9 p.m. According to their case, the representatives of the three departments, viz., the police, the Collector and the Municipal Corporation, were to man the control room. It is suggested on behalf of the police department that 3 Inspectors, 6 Sub-Inspectors and 120 police constables were sent to the Corporation building on that night. The three Inspectors and 6 Sub-Inspectors were to sit in or near the control room. These officers, according to their case, went to the Corporation building as also 120 police constables. It is further their case that Messrs. Dandavate, Deputy Chitnis, Sudame, Extra Aval Karkun, Mahamuni, Clerk, and Unde, Circle Inspector were deputed by the Collector to represent his department and that these persons went to the control room as per instructions of the Collector at about 9 p.m. On behalf of the Municipal Corporation, the following persons went to the Control Room :—

- (1) Sawant, Chief Market Inspector.
- (2) Vedpathak, Chief Encroachment Inspector.
- (3) Rane, Chawl Superintendent and Welfare Officer.
- (4) Kadam, Watch and Ward Inspector.
- (5) Padve, Head clerk to Assistant Municipal Commissioner (Special).

It is their case that all these persons were sitting in the Corporation building through the whole of the night. The three Inspectors of Police who went to the Corporation Building are: Karande of the Local Crime Intelligence Bureau, Jadhav of Faraskhana and Risaldar of the Vishram Bag Police Station.

**I. Principal function of the Control Room. The information conveyed by wireless operators : Whether messages authorised**

I will discuss the question of the presence of the aforesaid persons and the activities carried on by them through the whole of the night presently. In the meantime, I would like to consider the principal function of the Control Room, viz. to get information about water levels at Panshet and Khadakwasla through the wireless Headquarters at Vishram bag and Bhamburda Headquarters. I would also deal with the various messages that were sent from the wireless stations at Panshet and Khadakwasla and how many of them were communicated to the control room. I have already pointed out that no information was given to the wireless operators or to the Superintendent of Police, Wireless, stating that a Control Room was established in the Corporation Building and that the operators should convey information to the officers sitting in the Control Room regarding the Panshet situation. The Divisional Commissioner in his deposition (Ex. 516) admitted :

“ There were no arrangements for conveying any message to me through the Control Room during the night time. Dandavate was to convey messages to Prabhakar. Some representative of the Police was to convey to the D. S. P. It was understood that the Collector or the D. S. P. or both would keep me informed of the latest developments. I add that they would inform whenever my advice was considered necessary by them. It was left to the discretion of the Collector or D. S. P. when they should inform and when not to inform. I did not receive any message during the whole of the night of the 11th either from the Emergency Control Room or from any other source regarding the situation at Panshet.”

(The quotation is not continuous)

This implies that both Dandavate and the representative of the Police Department were to receive messages and then to convey them to the respective bosses. Prabhakar in his deposition (Ex. 421) stated :

“ I did not think it necessary to maintain contact with the latest developments at Panshet during the 11th night because, according to me, there was no danger to the Panshet dam. I do say that I had kept in touch with the Panshet Dam through the Control Room and through my Deputy Chitnis, Dandavate. I instructed Dandavate to keep himself in touch from the Control Room with the police operators. This contact would be on telephone. I had asked Dandavate to continue to make inquiries from the wireless operators throughout the night. I had not given any instructions to the wireless operators to convey the messages received from Panshet to Dandavate on phone. I do not know whether the operators have no authority to convey messages to any person except the addressees or the person to whom the message is intended to be informed.”

Dandavate in his deposition (Ex. 829) admitted that the most important task of conveying information received from the wireless operators to the Collector was assigned to him and from that point of view, his role was very important. He also stated :

“ No special arrangement was made for communication between the control room on one side and the police headquarters, wireless station and the Vishram Bag Police station control room on the other. I do not know whether the operators in the Police Headquarters wireless station and Vishrambag station control room were instructed to send messages to the control room in the Corporation building. . . . Since we in the control room had talks with the Vishram Bag and Headquarters wireless stations, it must be inferred that the Headquarters and Vishram Bag wireless stations must have been made aware of the existence of the control room. Neither I nor any one else had informed the wireless station that the Control Room was established.”

In his written statement at paragraph 9 Ex. 830, Dandavate states :

“ I made telephone calls every half an hour for obtaining information about the water levels at Khadakwasla and Panshet dams as also the situation of the dam and the weather conditions at Panshet.”

I have cited parts of the passages from the deposition of Dandavate at an earlier part in connection with the discussion as to whether Dandavate was present in the control room. My object in referring to some of these passages again from his deposition as also the deposition of the Collector is to show that there was no formal communication to the Superintendent of Police, Wireless, informing him that the control room was established and requesting him to direct his operators to pass on messages regarding the Panshet situation to the officers manning the control room. It appears from the answers given by the Collector as also by Dandavate that wireless operators went on conveying some information to Dandavate merely because he told the operators that he was the Deputy Chitnis of the Collector and was speaking from the Control Room.

In this connection, it is necessary to refer to the evidence of S. M. Nabar. The Superintendent of Police, Wireless (Ex. 800). Nabar makes a distinction between log messages or service messages on one side and regular messages on the other and describes the procedure which is followed in the matter of conveying these messages. Nabar says :

“ Normally, log messages which are also called ‘ service messages ’ are sent from wireless staff at one end to the wireless staff at the other end in the interest of control, communication operation, maintenance of

equipment or in respect of any enquiry of handling of traffic etc. The log messages are not meant for communication of information between one outsider and another. An outsider is expected to put down his message on a piece of paper, sign it and hand it over to the operator, in which case the operator would send it as a regular message. Occasionally, a message which is sent in writing is transmitted on telephone to the wireless station at the transmitting end for onward transmission. In that case, the confirmation copy is sent. It is something unusual that messages have been sent as service messages between one operator to another to convey information which is unconnected with the administration of the wireless. Unofficial reports cannot be sent as service messages or log messages in the ordinary course. In a serious emergency, his power is exercised by the operator to transmit log messages at the instance of local officers."

The attention of the witness was drawn to the following sentences from the deposition of Marathe (Ex. 312), an operator working at the Panshet Wireless Station :

"I used to send even unofficial reports. It was not my business to ascertain whether the report was official or unofficial."

Nabar admitted that this was a departure from the normal practice. Nabar, however, proceeded to add that the circumstances prevailing during the night of the 11th were abnormal and, therefore, it can be said that there was an emergency. Nabar admitted that he sent the message at Ex. 365 at 15.30 hrs. saying that messages regarding water level should necessarily be originated by the P. W. D. personnel. He explained that he had to send the above message because of a log message at Item No. 1 at Ex. 384 sent at 14.33 hrs. from Panshet to Poona, saying :

"There is no immediate danger to the dam at Panshet as no higher level of water is reported. Necessary arrangements for preventive measures are being done."

Nabar has admitted that this message was initiated by the operator. Nabar says that he gave instructions that initiation in conveying messages regarding water level should be taken by P. W. D. people and not by the operator. He has admitted that in spite of the above directions, the operators had initiated a number of messages regarding water level and the situation at Panshet in the form of log messages. He explained that it was not his intention that every message relating to water level and the condition of the dam should be in the form of a log message. According to him, his directions in Ex. 365 only meant that every message, whether it was regular or log, should be issued under the authority of the P. W. D. people. He has admitted that there was no way of getting the authorisation of the officer in respect of a log message. At a later stage, Nabar made a somersault and stated that his object in sending this message Ex. 365 was that the operator should be armed with a writing signed by the P. W. D. officers before he sent a log message. Again Nabar changed his stand and stated that when he said that messages regarding water level should necessarily be originated by the P. W. D. persons, he meant to cover verbal as also written authority. He admitted that his impression on receiving Item No. 1 at Ex. 384 was that the operator may not have obtained permission of the P. W. D. authorities when he sent the log message. He also admitted that on the face of none of the log messages could it be found that the message was authorised by the P. W. D. authorities. He then proceeded to offer a feeble explanation saying that this may be due to an emergency.

As regards the procedure of conveying the message, Nabar says :

"It is correct to say that the operators cannot convey the substance of the message to any one except the addressee. There are standing

instructions on this point. I could not give and, in fact, as far as I remember, I did not give instructions to the operators to say that although they could not convey the substance of a regular message to any one except the addressee, they could convey the substance of the log messages to any one they liked. In case the addressee asks the operator to convey the message to any other person, then it can be conveyed to that person. . . . . After receipt of messages from Khadakwasla and Panshet stations in the Shivajinagar Headquarters, the operator would convey them on phone to the persons concerned. The messages, whether they are log or regular, were meant to be conveyed to the addressees or informees. The operator has no authority to convey them to any one except the addressees or informees. In respect of regular messages, the names of the addressees and informees are mentioned in the body of the message itself."

(The quotation is not continuous).

Pausing here for a moment, it is clear that except with the consent of the sender of the messages, the messages cannot be conveyed to any one except the addressee or the informee. It is nobody's case that the Irrigation authorities at Panshet authorised the operators at Poona to convey the messages to outsiders. In fact, they did not know that there was any control room set up in the Corporation building nor did they know the persons who were in charge of the control room. It is difficult to understand why the Irrigation Authorities at Panshet were not informed about the Control room and asked to authorise the wireless operators at Panshet to convey the messages to the officers sitting in the control room.

At one stage, Nabar tried to suggest that in case of an emergency, any one can make a query and to a particular query, the operator may give a reply on the basis of the messages received by him. I have carefully gone through the Book 'Radio Procedure for Police Services', a copy of which was given to me by the Superintendent of Police, Wireless, himself and I find no provision therein which authorises an operator to disclose, either log or regular, messages to an outside officer on his asking questions in that regard. I do not think that the operator would take any responsibility on his shoulders to convey messages to unauthorised persons without seeking permission from his boss viz. the Superintendent of Police, Wireless. It is ridiculous to say that the operator would go on communicating the messages or their substance to a person who says on the phone that he is a Deputy Chitnis. The operator would not be so rash as to act on a statement made by a person, whom he did not know on phone. What is the guarantee that the person who was saying on the phone that he was such and such officer was not personating? At least for his own safety, the operator would ask the so-called officer speaking from the other end of the phone to submit a writing about his credentials or about his authority. The Superintendent of Police, Wireless, has brushed aside the above difficulties by making a blunt statement that it is enough if an officer puts a query in an emergency to get a reply from the operator. Mr. Nabar was also asked questions as to whether there was any written evidence to show that the operator has conveyed a particular message to the officer who makes queries to him and if there is none, should the Commission merely rely upon the word of the operator who is giving evidence from memory after a lapse of considerable time? The answers given by Mr. Nabar throw a good deal of light on the difficulties inherent in a situation like this. This is what Nabar says on this point :

"In respect of log messages in an emergency, the operator who gets a particular query from a particular officer may not make a note of it anywhere mentioning the name of the officer from whom the query is received.



He may not put down the substance of the query on a piece of paper. He would simply send the message to the particular station and, after getting the reply, communicate on phone to the querying officer ..... There is no material nor any document from which one can gather that the message had been transmitted on phone by the receiving operator to a particular officer. For this, we have to rely on the word of the operator. In an emergency, messages are accepted by the operator from any Government officer but from no private individual, howsoever highly he may be placed. No message will be accepted even from a man of the status of Mayor of Poona. In view of the fact that several officers are likely to ask for information on several points, the operator must rely on his memory in the absence of any writing to transmit particular information to the proper officer. One has to rely on the memory of the operator, if he gives the names of the officers to whom the messages have been transmitted by him after a lapse of considerable time after the event. There is no material from which the statement of an operator who gives out certain names as being the names of the persons to whom the messages are transmitted can be checked and one is left either to accept his word or to reject it." (The quotation is not continuous).

In this background, let us now turn to the evidence of V. D. Khandekar (Ex. 381), the head operator at the Wireless Headquarters, Poona Controls. In substance, Khandekar says :

"I say that on the night of 11th July, Revenue and P. W. D. officers at the Inspection bungalow had made queries with me about the situation at Panshet. Between 11 p.m. on the 11th and 7 a.m. on the 12th, I may have received in all five or six queries from the Revenue Officers. Among them were Deputy Chitnis to the Collector. The other officers' rank or name, I do not remember. The queries that I received from the Engineers from the Inspection Bungalow during the same period were five or six. I cannot mention their names or ranks. There is no mention about these queries in the log book, and I am stating about them from memory. I did give reply to each of the queries put by the Revenue Officers and the Engineers. I may have conveyed the message received at 23-54 hours saying (Ex. 383 entry No. 6 or Ex. 317) :

'It is from higher authorities report that Panshet Dam still safe.  
Lake level 2067.50 ft.'

We have not maintained any log book or despatch book on our office in regard to the messages received or sent out on phone..... I have already stated that I received 4 or 5 queries from the Deputy Chitnis to the Collector. I did not communicate any of these messages as such to the Deputy Chitnis, but generally I conveyed the information regarding the situation at the Panshet dam. The information that I was conveying to them was based by me on the messages that I was receiving. I say that I informed on the phone to the Deputy Chitnis on all the 5 or 6 occasions saying : "the Panshet Dam was safe." I again say that I did not convey the said information on the basis of the original message (Ex. 375, Sr. No. 6) received by me, viz., "the sunken portion is stabilised at R. L. 2070. The work of laying sand bags is in progress. Lake level is R. L. 2067.4....." I conveyed the information on the basis of the log messages received by me. I say that we cannot even convey the substance of the messages to any person other than the addressees. These are oral instructions given to us by our superior officer, that is Nabar. There is no written instruction to that effect. According to the rules and regulations under which our system works, we cannot convey information to any one and every one including Government

officers. A message can be conveyed either to the addressee or informee. That applies even to a distress message. In case the addressee informs the operator saying that the message should be conveyed to some other person, we do accordingly. Mr. Nabar has also given oral instructions that there is no objection to convey the substance of the log messages. I cannot state the reason for this distinction."

(The quotation is not continuous.)

It is significant to note that the witness began by saying that the revenue and the P. W. D. Officers went on making queries on the night of the 11th by sitting in the Inspection Bungalow. According to Khandekar, 5 or 6 queries came from the Revenue Officers and 5 or 6 queries from the engineers. None of the engineers had made any queries during the course of the night. It was not even suggested to any of the engineers that he made any such queries, nor has any suggestion been made that Khandekar gave replies to any of the engineers sitting in the Inspection Bungalow. The only engineers who were sitting in the Inspection Bungalow on that night were Manerikar and Padhye. It is an admitted fact that Manerikar had put out a regular message and got a reply to the same at Khadakwasla. It is not suggested that thereafter, either he or Padhye made any queries with the wireless operators. Khandekar also admitted that he could not convey the substance of the regular messages and suggested that whatever information he gave to the Deputy Chitnis was based on the substance of the log messages to the revenue officers, he made the most extraordinary statement, viz., that Nabar had given him instructions that there was no objection to convey the substance of the log messages. Nowhere has Nabar said that he gave any such instructions to Khandekar. I have already pointed out that having realised this mistake in saying that the revenue officers including Dandavate were speaking from the Inspection Bungalow, he corrected himself and stated that the revenue officers were speaking from the Corporation Building and the Irrigation Officers were speaking from the Inspection Bungalow.

Khandekar was closely questioned as to the messages on the basis of which he conveyed the information which he alleges to have conveyed to the Deputy Chitnis that the dam was safe. He admitted that none of the messages mentioned in Ex. 385 (Serial Nos. 1 to 10) states or even hints that the dam was safe. He also admitted that the reply that he received at 23-54 hours (Ex. 383, Serial No. 6) saying "It is from higher authorities report that Panshet dam still safe. Lake level 2067.50", was communicated to the N. D. A. and to none else. A little later the witness changed the story and said: "I may have conveyed the message to Revenue Officers and Engineers received at 23-54 hours." Pausing here for a moment, it is necessary to remember that according to Khandekar, one officer from the Defence Academy phoned to him and told him that the Panshet Dam had breached and asked him to obtain the latest information. Khandekar further says that he received a reply at 22-46 hours (Serial No. 2 of Ex. 383) saying "Still no progress of water, no danger." This reply was communicated to the N. D. A. on phone. He adds that at 23-52 hours, again some person from N. D. A. phoned to him and told him that some villagers at Kondhve had assembled at the Assembly Hall at the Academy and asked him to obtain information about the position of the dam. He received the reply at 23-54 hours referred to above, which is at Ex. 383 (Sr. No. 6). He adds that the message that he put out at 23-53 hours (Ex. 383 Sr. No. 5) saying: "Please confirm from higher authorities whether water has gone to Kondhve-village" was also at the instance of the N. D. A. That being the back-ground, it is perfectly natural that he

only conveyed the message received at 23-54 hours (Ex. 383) (6) to the N. D. A. authorities and none else. Khandekar, however, in his zeal to support the case of the revenue authorities went on to say that he might have conveyed the message to revenue officers and engineers. A little later, Khandekar stated :

“ Through the whole of the night of the 11th, I made no enquiries on the wireless about the rain and weather conditions prevailing at Panshet. I did not convey any information to any one in Poona either regarding rain or weather conditions prevailing at Panshet during the night of the 11th. Dandavate did not originate any message from Poona either in his own name or in the name of the Collector, Poona, in regard to information about the situation at Panshet. Dandavate did not ask me as to when I had received the information that I conveyed to him on 4 or 5 times. I say that in all, I received two queries from the Deputy Chitnis. The rest of the queries, i. e. 3 or 4, are by the other Revenue Officers whose names I do not know. The Revenue Officers and the Deputy Chitnis were speaking from the Inspection Bungalow. (The witness contradicts himself and says) : Dandavate was not speaking from the Inspection Bungalow. The other officers, however, were speaking from the Inspection Bungalow. The Collector had not authorised me to convey information either to the Deputy Chitnis or to the Revenue Officers. I made no enquiries of the rank or the designations of the Revenue Officers. I made no enquiries as to whether these revenue officers were real revenue officers or some false persons. I now say that the Deputy Chitnis Dandavate was speaking from the Corporation Building, The Deputy Chitnis made queries to me twice. Dandavate told me on the first occasion that he was the Deputy Chitnis and he was making the queries in that capacity. I did not try to ascertain whether the person making the queries was really the Deputy Chitnis or somebody else. I now say that Dandavate was speaking from the Corporation building, whereas the rest of the Revenue and P. W. D. officers were speaking from the Inspection Bungalow. It is not true that I have now changed the story viz., that Dandavate was speaking from the Corporation Building and not from the Inspection Bungalow with a view to fit in with the account given by the Collector. At that time (earlier) I did not recollect to mention the Corporation Building.”

As against the version set up by Khandekar in his deposition (Ex. 381) which has gone on fluctuating from time to time, we have the version set up by him in his written statement at Ex. 382. At paragraph 4, Khandekar says :

“ On the night of the 11th, during my duty hours there were queries from the local officers at Poona received by me on telephone about Panshet and Khadakwasla dams. I, therefore, asked the Duty Operator to enquire from Khadakwasla and Panshet about the information required by the Officers. On receipt, on wireless, the replies to these queries from the stations concerned were conveyed to the officers who made the queries. Such messages were accepted on telephone at that time and transmitted and replies obtained by issuing log messages to avoid delay only because this was an emergency period.”

It is clear from the above that the queries received from the local officers were put out from Poona in the form of log messages and replies were received again in the form of log messages and these were communicated on phone to the various officers. Mark the last sentence “ such messages were accepted on telephone at that time and transmitted and replies obtained by issuing log messages.” That means that the messages sent out from Poona on the basis of the queries made on telephone were transmitted on the wireless to Panshet or Khadakwasla and replies were received on the wireless in the form of

log messages and it is these replies that were conveyed to the officers concerned. The position taken up by Khandekar in his deposition boils down to this : That whenever queries were received by him on the phone, he tried to satisfy the questions raised by giving them information which he used to gather from the log messages received by him. This is clear from Khandekar's replies :—

"I did not communicate any of these messages as such to the Deputy Chitnis, but generally I conveyed the information regarding the situation of the Panshet Dam. The information that I was conveying to them was based by me on the messages that I was receiving."

This is also clear from the following reply given by Khandekar in answer to a question by Shri Bhandare, the Advocate for the Irrigation Officers :

"Dandavate did not originate any message from Poona either in his own name or in the name of the Collector of Poona in regard to information about the situation at Panshet. Dandavate did not ask me as to when he had received the information that I conveyed to him on 4 or 5 times."

Notwithstanding these fundamental contradictions in the evidence of Khandekar, we are told, in all seriousness by the Advocate on behalf of the Civil Authorities that there is no reason why Khandekar should tell lies and Khandekar's evidence should be looked upon with suspicion. It is also necessary to note that there were no document which corroborates the story of Khandekar as put forward in his written statement or his deposition. Khandekar admits :

"We have not maintained any log book or despatch book in our office in regard to messages received or sent on phone."

I have already cited passages from the deposition of Dandavate, Deputy Chitnis at Ex. 829 in which Dandavate stated that in all, he made 15 queries to the headquarters wireless station and 2 or 3 queries to the Vishram Bag control room and in all these queries, he asked the same question viz. the situation at Panshet. He positively asserted that he got replies to each of the queries. At the same time, he had to admit that he made notes of 2 or 4 messages received by him on a piece of paper. Dandavate also admitted that he did not know who had authorised the head operator or the operators in the police headquarters wireless to convey the wireless messages to him. At the same time he relied upon what he called a standing practice to the effect that whenever the Deputy Chitnis asked for information the wireless operators supplied that information. He admitted that there was no rule to that effect. Dandavate further stated that when he made the first enquiry at 9-45 p.m., the head operator raised no objection and when he told him that he would be asking for further information also he did not protest, but on the contrary, agreed to give him information. I have also referred to that part of Dandavate's evidence, wherein he admitted that no special arrangement was made for communication to the control room on one side and the police headquarters wireless station and Vishrambag control room on the other.

As pointed out above, Dandavate says that he made notes of three messages on the jottings at Ex. 831 received during the course of the night while he was in the control room. They are as follows :—

(1) 11-15 p.m.

Panshet .. .. . 67-50

Khadakwasla .. .. . 29-80

1 a. m. .. .. . 67-50

No rain no danger.

5-30 a.m.

67-50 .. .. . Panshet.

29-60 .. .. . Khadakwasla.

It will thus be seen that except the entry, 'no rain no danger', the rest of the entries relate merely to the lake levels. I have already referred to the evidence of Khandekar when he emphatically states that he did not enquire about rain and whether conditions at Panshet and did not communicate any information regarding rain and weather conditions at Panshet to anyone in Poona. If that is so, then the entry, 'no rain, no danger' is obviously false. At one stage, he stated that he did not communicate the message that there was no danger to any one except the N. D. A. Later on he corrected himself by saying that he communicated the message to the revenue authorities. Assuming that the message at (Ex. 383) (6) was communicated to Dandavate, it could not have been communicated before 23.54 hours i.e. 11.54. But Dandavate has noted the lake levels :—

Panshet 67.50

Khadakwasla 29.80,

as at 11.15, suggesting that he received message in regard to the same either at 11.15 p.m. or a little before. I have also laboured to show how the entry 'no rain, no danger' has been cramped in the narrow space available and for what reason. The matter does not rest there. So far as the message stated to have been received at 5.30 a.m. in the jottings at Ex. 831 is concerned, it is in evidence that this message was received by the Collector himself. In his written statement at paragraph 33 (Ex. 423), the Collector says :

"At about 6.30 a.m. on 12th July 1961 I was informed on the telephone of the water levels at 5.30 a.m. at Panshet and Khadakwasla dams. These levels were as follows :—

Panshet 67.50

Khadakwasla 29.60".

At paragraph 34 the Collector says that the Commissioner talked to him on the phone at 7.00 a.m. At paragraph 35 he says that after this telephonic talk with the Commissioner he got a telephone from Damry. At paragraph 37 the Collector states that after his conversation with Damry, Dandavate rang him up. The Collector admitted in his deposition that before this talk he had no talk with Dandavate through the whole of the night. That clearly shows that the Collector got information about the water levels prevailing at 5.30 from other source, because he received that message at 6.30 a.m. and when the talk with Dandavate took place after 7.00 a.m. It is, however, significant that Khandekar does not speak of having sent any message to the Collector directly. Nor does he say that he sent the message re regarding the water levels at 5.30 a.m. to Dandavate. Therefore, the story of informations having been conveyed to Dandavate on the night between the 11th and the 12th appears to be a myth and an invention.

Referring to the messages regarding water levels contained in the Khadakwasla R/T Log Book, (Ex. 378), it is noted that the lake level at 9.45 p.m. on 11th July 1961 is shown as 29.90 at Khadakwasla and 67.40 at Panshet'. Dandavate's note shows that the level at Khadakwasla was at 30.30. The same level has been shown in the written statement of the Collector at para. 31. From the same document (Ex. 378), it appears that no information regarding the lake levels was conveyed after 0347 hours, i.e. 3.47 a.m. on the 12th. This is an additional circumstance which casts doubt upon the genuineness of the entries made in the jottings at Ex. 831.

I have already referred to the message (Ex. 365) initiated by Nabar, stating that messages regarding water levels should necessarily be originated by the P. W. D. personnel. An attempt has been made by Marathe (Ex. 312) and Kale (Ex. 367), who were working at the Panshet wireless station to show

that Panse was sitting in the wireless room and it was at his instance that messages were initiated. N. V. Marathe says :

“ Panse was sitting by my side till 12.30 midnight. Thereafter, no one from the P. W. D. was sitting by my side throughout the rest of the night till I was there.”

Panse in his written statement, (Ex. 224), makes no reference to his sitting in the operator's room for giving instructions to the operators for sending messages. In answer to questions by the Commission's Counsel, he asserted that he was not concerned with any of the messages that were sent from Panshet. It is significant that Mr. Ghaswala declined to cross examine this witness, thus denying himself an opportunity to make a suggestion to Panse that he was sitting in the operator's room and authorising the messages put out from the wireless station at Panshet. It has been pointed out in the written arguments put in on behalf of the civil authorities that at the time when Panse gave evidence the civil authorities could not know whether Panse was sitting by the side of the operators working at Panshet wireless room. and the statements of the wireless operators came after Panse's examination. It may however, be pointed out that by his letter, dated 16th October 1961, addressed to the Commission, Mr. S. Majidullah, the then Deputy Inspector General of Police, Poona Range, had mentioned the names of S. M. Nabar, Superintendent of Police, Wireless; Poona, and N. V. Marathe and J. M. Kale, Wireless operators, in his list of officers whose evidence, in his opinion, was likely to be of assistance. It was because of this letter that the Secretary for the Commission wrote a letter to Nabar on 9th March 1962 asking him to put in his written statement and the written statements of other officers as preliminary to their being examined as witnesses. It was in pursuance of this letter, that S. M. Nabar wrote a letter to the Commission on 12th March 1962, that he and the wireless operators were submitting their written statements to the Commission. Mr. Ghaswala and Mr. Murudkar represented Majidullah. It is, therefore, reasonable to assume that instructions must have been received from Majidullah about the role played by the operators Kale and Marathe. Moreover, Mr. Murudkar took inspection of all the log books submitted by Nabar as early as 5th February 1962, i.e. even before the recording of evidence had commenced. Again, at the time of the examination of the wireless operator's it was noticed that Mr. Ghaswala and Mr. Murudkar had in their possession de-coded copies of the relevant entries. It was, therefore, necessary for Mr. Ghaswala to ask questions to Panse, Kanangalekar and other irrigation officers about these messages. In any case, it was the duty of the Advocates representing the Civil Authorities to make enquiries into the matter and obtain proper instructions. It is no use complaining that they were not able to know that according to the operators Panse was sitting by their side on the night of the 11th. Even then it was open to the Advocate on behalf of the Civil Authorities to ask the Commission to recall the witness for asking relevant question on that point. J. M. Kale, the other operator at Panshet, stated that he received the message from Poona at 0605 hours asking 'what is the situation at Panshet'. And he replied : "Situation at Panshet is as before". Kale explains that before giving this reply he went into the other room where Panse was sitting and asked him as to what reply should be given to this query. This shows that, any rate, between 12.30 and 6.05 on the 12th, none of the irrigation authorities was consulted for sending messages to Poona about the Panshet situation.

Kanangalekar in his written statement, Ex. 221, says :

“ At about 4.30 p.m. the wireless operator asked him as to what reply he should give to a query from Poona about the situation at Panshet. I told him to report that the situation continued to be grave.”

Kananglekar says that he sent in all 2 or 3 messages to Desai during the night and the substance of these messages was that the situation continued to be the same. He further says that he did not receive any further message or any queries from Desai or Khursale or Manerikar or Padhye during that night. Further on in his deposition in answer to questions in cross-examination he says :

"I was not all along sitting in that room (where the wireless was set up). A peon was kept there and he used to tell me whenever a message came. I did not send any message to Manerikar during that night. At about 3 a.m., Bhalerao told me that he had received a message from Manerikar. I do not know whether Bhalerao sent any message to Mr. Manerikar, nor did Bhalerao tell me that he had sent any message to Manerikar. The messages from the dam sometimes used to be oral when the Deputy Engineers themselves came and reported. Otherwise, they used to be on slips of papers. I used to go through these messages. These slips have not been preserved. They were not put down on any book.....The wireless operator at Panshet had maintained a book noting down the messages sent.....At about 2-30 a.m. Capt. Bakshi had come to the control room. I was in the room at that time. I, Bakshi and the three operators were in that room. I do not know their names. Two of the operators were sleeping. One was working through the whole of the night. I do not remember whether Bakshi sent any messages. I was there for about 10 minutes and then I left. Capt. Bakshi remained in the room for some time. I had a discussion with Capt. Bakshi about the situation of the dam. He complained about high wind and waves. He said that he and his party were putting sand bags."

Later on he stated :

"I gave a reply to the operator at 4-30 a.m. saying that the situation continued to be grave thinking that the operator was to convey it to some authority. The message was sent by me on my own and was based on my reading of this message. Nobody had told me in so many words that the situation continued to be grave."

The only question put by Mr. Ghaswala with regard to the wireless operators was : "Whether the witness knew the names of the operators ?". The witness replied that he did not know. On this point Kale has contradicted Kananglekar. He has gone so far as to say that he had not seen Kananglekar at Panshet Rest House on the night between 11th and 12th of July. Kale says :

"It is not true that I told Kananglekar at 4-30 a.m. that I had a message from Poona asking about the condition at the Panshet dam. Nor it is true that in reply he asked me to convey that the situation at Panshet continued to be grave."

It will thus be clear that there is no evidence to show that the messages sent from Panshet were authorised by any of the irrigation authorities. In spite of this, in one or two of the log messages, we find the expression. "It is from higher authorities....." Apart from the clear instructions given by Nabar, I have no doubt that the Collector or the Commissioner would have asked Desai to give authorised information about the situation at Panshet. If at all, either of them was serious to know the conditions prevailing at the dam, the position would not have been allowed to be so chaotic as it appears today. The position today is that no information was given either to the irrigation authorities or to the Superintendent of Police, Wireless, nor even to the wireless operators that a control room was set up for the purpose of securing authorised and authentic information regarding the situation at Panshet. The Deputy Chitnis, relying on what he chooses to call a standing practice, is supposed to have told the operator at the time of making the first query that he was the Deputy Chitnis and was speaking from the control room. On the basis of

such a phone message the operators, without consulting their superior authorities are supposed to have gone on conveying information to the revenue authorities. The operators have not cared to see whether the messages received by them were authorised by the irrigation authorities, and this has happened notwithstanding specific instructions from Nabar that all messages regarding even lake levels should originate from the P. W. D. authorities. This rule would apply with greater force in respect of messages about the condition of the Panshet Dam, because that involved greater responsibility than the responsibility implicit in conveying messages regarding water levels.

All the messages that passed between Khadakwasla and Poona during the course of the night have been brought on the record of this case. The wireless operators concerned in either despatching these messages or receiving them have also been examined. It is, therefore, necessary to analyse some of the important messages that were exchanged on that fateful night. This analysis will help to see what was the condition of the dam and what was the effect of the bag stacking operations on subsidence. It will also help us in trying to find out what messages, if any, might have been conveyed by the operators at Poona to the civil authorities.

## II. Analysis of the Wireless Messages on the 11th

Two wireless stations were installed at Khadakwasla on 1st July 1961, one of high frequency and the other of very high frequency. The object of the installation of these two stations was the communication of information regarding the water level in the Khadakwasla reservoir. J. M. Kale (Ex. 367) was working at Khadakwasla from 1st July 1961 onwards. S. B. Kulkarni (Ex. 372) was also working on this station from 7th July 1961 till 12th July 1961 up to 09-30 hours. It appears that after Kulkarni one B. M. Shukla worked at the station. On 10th July 1961 Desai, Superintending Engineer, made a request to Nabar, Superintendent of Police, Wireless, for the installation of a wireless station at Panshet. Nabar advised Desai to move the Inspector General of Police for permission. Desai spoke to Manerikar and informed Nabar about the same at 4-00 p.m. At 9-30 p.m. the same day a wireless message was received from the Inspector General of Police asking Nabar to instal a wireless at Panshet. At about 6-30 a.m. on the 11th Nabar received a telephone call from Prabhakar enquiring whether a wireless station could be installed at Panshet, there being no reliable means of communication with Poona from Panshet. Nabar told him that the wireless staff and equipment were already on their way to Panshet. Police Wireless Inspector Datar went to Panshet with Marathe and on his way, at Khadakwasla picked up Kale and took him with him to Panshet. N. V. Marathe and J. M. Kale are the two operators who worked at the wireless station at Panshet. In the first instance, the wireless aerial was installed in open field beyond the spillway at about 13-50 hours. After some time, the wireless station was dismantled and the equipment was carried to the Rest House. The station was installed in the Rest House at about 17-00 hours. The station could not work between 17-00 hours to 21-15 hours because of the development of the defect in the transmitter. Communication was established at 21-15 hours. It may be mentioned that the station established at Panshet was only W/T station.

Before proceeding I may explain the meaning of the abbreviations :—

WT—Wireless Telegraphy.

RT—Radio Telephony.

HF—High Frequency.

VHF—Very High Frequency.

So far Poona is concerned, the RT station was in Vishram Bag Wada VHF control room and the WT was in the Police Headquarters, Bhamburda.



Before the setting up of the wireless station at Panshet, the messages from Panshet were first of all communicated on phone either to the Canal Signaller at Khadakwasla or to the Wireless Operator at Khadakwasla. That is why Bhalerao had to send the message at Ex. 375 (1) [Ex. 385 (1)], saying that Panshet dam was in danger and heavy floods were expected first on phone to Theurkar signaller at Khadakwasla who in his turn gave the message to B. V. Shukla, the operator and it was the operator who sent that message to Poona. This was by far the most important message that has passed on from Khadakwasla RT station. The other message from Khadakwasla, to which a reference may be made, is at Ex. 375 (5), by Nagarkar to Theurkar signaller, saying in substance that he informed S. E. about the message at Ex. 375 (1) and asking Theurkar to keep one man at signalling station and secure complete details of Panshet danger. One more message transmitted from Khadakwasla is at Ex. 375 (2) which was sent by Theurkar signaller at 05-41 hours to Nagarkar. This was in reply to Ex. 375 (5) and in that message Theurkar stated that he did not get Panshet, but the level at Panshet was 2065.50 at 4 a.m. and that at Khadakwasla 30.70 at 5-30 a.m. Then there is a message (Ex. 377) sent by Shukla operator at 06-07 hours to wireless inspector at Poona seeking instructions regarding the shifting of the station, in view of the fact that Panshet dam was in danger. Superintendent of Police, Wireless, was mentioned as an informee in this message. The last message transmitted from this station, to which we need refer is Ex. 375 (4). Bhalerao sent that message to the District Magistrate that needful was being done. This message had to be relayed from Khadakwasla because at that time the Panshet wireless station was not operating due to a defect in the equipment. Bhalerao's reply was in answer to the message sent by the District Magistrate, saying that 200 army personnel were leaving for Panshet at 15-30 hours, they were expected to reach Panshet 17-00 hours for strengthening the sinking dam portion and asking Bhalerao to communicate the present position by return [Ex. 385 (5)]. Bhalerao's reply at Ex. 375(4) was received by the Collector while he was in the Divisional Commissioner's meeting. One of the points urged in support of the contention that the engineers felt that there was no danger to the dam at Khadakwasla or if there was danger that had passed because of the help of the military Jawans, is that this message merely said that needful was being done and did not refer to the position of the dam. Bhalerao in his deposition explained that the words 'present position' conveyed to him the idea that the Collector wanted the position relating to the arrival of the military Jawans and the work of bag stacking operations. Whether this reply is satisfactory or not, it is clear that the words 'needful is being done', in no case, conveyed the idea that all was well at Panshet. These words simply mean that whatever steps were felt necessary were being taken.

I will now pass on to the messages which passed from the Panshet wireless station. Mr. Manerikar, the Additional Chief Engineer sent a message to Bhalerao at 21-35 hours (Ex. 316) saying : 'Please let me know immediately whether the raised portion of the sunken dam has been stabilised. If so at what level. Also state how the work is progressing and what is the latest level. I am starting for Panshet on receipt of your reply.' This message was relayed from Poona WT control. The reply to this message was sent by Bhalerao from Panshet at 00-15 hours and received 00-39 hours Ex. 385 (4)- Ex. 375 (5), saying, 'the sunken portion is stabilised at R. L. 20-70. The work of laying sand bags is in progress. Lake level is R. L. 2067.4. As vehicles cannot directly come to the colony, you are requested to start in the morning to Panshet.' This is the only regular message which is relevant for our discussion that emanated from Panshet on the night between the 11th and 12th.

Then we have several log messages received at and transmitted from Panshet. The extracts of these messages as from Panshet log book are exhibited as Ex. 314. The extracts of log messages transmitted from and received at Poona are exhibited as Exs. 383 and 384. In technical language, these messages are known as service messages. There is considerable controversy about the authenticity of these messages and also as to which of the versions is correct, viz., the version contained in the log book of the transmitting station or the version contained in the log book of the receiving station. In particular, the entries of the messages sent at about 13-42 hours (There is no immediate danger to the dam at Panshet as no higher level of water is reported), that sent at 22-42 hours (Still no report but no danger), that sent at 23-27 hours (It is learnt that water has reached upto Kondhave village), that sent at 23-55 hours (It is from higher authorities report that Panshet dam is not in danger. Water level is 20-70 R. L.) are highly disputed. I have already referred to the message sent by Nabar (Ex. 365) which, in effect says that messages regarding water levels should necessarily be originated by the P. W. D. personnel. I have also discussed the evidence of Nabar, that of the wireless operators and the Irrigation officers, viz., Kananglekar and Panse, as to whether the messages sent from Panshet were authorised by them and also as to whether the wireless operators had authority to convey these messages to outsiders. On this point, I will refer to the evidence of Nabar relating to the practice followed in making entries in the log books :—

“The normal practice for the operator of the transmitting station is to put out a message first and thereafter to make an entry of the text of the message in the log book. The operator of the receiving station takes down the message letter by letter. The message noted down in the log book of the receiving station is, therefore, authentic.”

(The quotation is not continuous)

I do not propose to enter into a discussion as to which of the versions is more authentic, nor do I propose to discuss the discrepancies in the entries of the log books of the receiving stations and the entries of the log books of the transmitting stations. I am prepared to take it for granted that the version of the message contained in the log books of the receiving station is more correct and more authentic and will proceed to discuss the significance of these messages on that footing. The messages sent from Poona at 22-39 hours as it appears from Poona Log Book Ex. 383 runs thus :—

“Inform immediately whether any danger at Panshet. Reply immediately”.

The message that was received at Panshet from Poona at 22-42 hours, as recorded in the Panshet Log Book runs thus :

“Please inform immediately whether any danger at Panshet. (Ex. 314)”.

The reply received at Poona at 22-46 hours runs thus :

“Still no progress of water. No danger.” (Ex. 383).

The first thing that needs to be mentioned about this message is that on the face of it it does not show that this was authorised by any of the Irrigation Officers. The second point to be considered is that it does not say in unqualified terms that there was no danger, but what it says is that ‘no progress of water and no danger’. That means, there was no danger still, i.e., at the time when this message was sent from Panshet, i.e. at 22-42 hours. In passing, it may be mentioned that the version appearing in the Panshet log book. Ex. 314, of this message is :—

“Still no report but no danger. Carry on.”

Then the Poona Log Book at Ex. 383 shows that another message was sent from Poona to Panshet at 23-52 hours asking. “Any danger at Panshet.”

This message does not find place in the Panshet Log Book, Ex. 314. If the entries in the log book of the receiving station are to be treated as more authentic, it means that no such message was received at Panshet.

The Poona Log Book at Ex. 383 shows that the following message was received at Poona at 23-52 hours from Panshet, saying, "Please refer to your query. Panshet dam still safe." It would thus be seen that all that was being conveyed from Panshet, whether on the basis of the authentic reports from the irrigation authorities or not, was that the dam was *still* safe. That can never mean that the dam had passed danger or that it had become absolutely safe. It may be pointed out that the log book of the transmitting station, viz. Panshet (log book), does not contain this message at all.

Ex. 383 Poona log book shows that a message was transmitted from Poona to Panshet at 23-53 hours saying, "Please confirm from higher authorities whether water has gone to Kondhave village." This message does not find place in the Panshet log book Ex. 314 which was the receiving station.

Then comes a very crucial message. Ex. 383, the Poona log book, shows that a message was received at Poona at 23-54 hours transmitted from Panshet which was to the following effect :—

"It is from higher authorities report that Panshet Dam still safe. Lake level 2067.50 feet." (Ex. 318).

In the log book of the transmitting station (Ex. 314), the message is shown to have been transmitted at 23-55 hours to Poona which runs thus :

"It is from higher authorities that Panshet is not in danger. Water level is 2070 R.L." (Ex. 317).

It is contended on behalf of the civil authorities that confirmation of the correctness of the message entered in the log book of the receiving station will be available in the entry of the log book of the referee station. At the relevant time, Nagpur was the referee station. Nabar in his deposition says :

"There is no corresponding entry in the referee station of Nagpur corresponding to the entry at Ex. 317. There is only an entry which reads 'unreadable'."

Assuming that the version appearing in the Poona log book is more authentic which says that the Panshet dam was *still* safe, I cannot understand how from this message an inference can be drawn that the dam had passed the danger point and that it had become safe absolutely. There is another difficulty for which no satisfactory explanation has been offered and it is this. that the Panshet log book i.e. the log book of the transmitting station mentions that the message was transmitted at 23-55 hours. There is no reason why the time mentioned in the transmitting log book should not be taken as accurate. Had this message been transmitted at 23-55 hours it is impossible to imagine that it could be received at Poona at 23-54 hours. Finally it is necessary to remember that this message was received at 11-54 p.m. From a message received at 11-54, one cannot conclude that the conditions remained static through the whole of the night. There is nothing to suggest that any of these messages were authorised by the irrigation authorities. At this stage I may refer to the admission made by no less a person than Nabar himself. He says :

"On the face of none of the messages could it be found that the message was authorised by the authority."

This answer he gave to a question put by Mr. Murudkar to the following effect :—

"Is it possible that an emergency like this, some times the operators may overstrip the authority ?"

This question was asked by Mr. Murudkar after taking special permission from the Commission. The reply given by Nabar was not in conformity with the question. It must, therefore, be said that Nabar has blurred out the truth when he says that none of these messages *prima facie* indicates that it was authorised by authority. Nabar has proceeded to qualify the reply by saying, "that may be due to the emergency." Had there been any truth in this reply, then I cannot understand Nabar's insistence in directing the operators not to initiate any messages without the authority of the irrigation officers. There was an emergency when Nabar gave the direction and he knew about it. It is not as if the emergency sprang up at the time when some of the messages, on which reliance is placed, were relayed. In this connection, I may refer to the replies given by Marathe operator in answer to questions by Shri H. R. Gokhale :

"The S. P. Wireless, had given specific instructions saying all the messages must be emanated from the P. W. D. officers and that the next of the messages would be reduced to writing and also contain the signature of the sender of the messages. Accordingly, I have transmitted messages written and signed by the P. W. D. Officers. After the messages from Poona were received at Panshet, I reduced them in writing and gave to the appropriate authorities and obtained their signatures in token of acknowledgment. It is only the written messages containing the signatures of the P. W. D. authorities which would be entitled to be called official messages or authorised official messages."

It is clear from these answers that it is only in respect of regular messages that the title 'authorised messages' can appropriately apply. In my view, Nabar's attempt at suggesting that even log messages could be regarded as authorised messages, notwithstanding that on their face they do not show that they were authorised provided they are sent in an emergency, is futile. The log messages are never meant for the information of outsiders. They are messages passed between one operator and the other and they merely relate to the internal management of the stations. If the log messages are to be utilised in an emergency for other purposes, there must be an express authorisation from the Superintendent of Police, Wireless. Even in that case if the message, on the face of it, does not show that it was initiated by the officer or authorised by him, it is impossible to call it an authorised message by merely invoking the argument of emergency.

In view of the position adopted by me, viz., of accepting the version as recorded in the receiving station to be more correct and authentic, it is not necessary to refer to the extracts of the log books from the referee stations sought to be produced by Mr. Nabar in the course of his cross examination by Mr. Murudkar. I consider the entire controversy in that respect as futile and the comments contained in the written arguments of the civil authorities, on the ground that referee log books were not admitted can only be dismissed as due to prejudice.

Although I have proceeded on the footing that what contained in the log book of the receiving station as more authentic, still I cannot help drawing attention to the positive evidence of the operator Marathe (Ex. 312) in respect of the most controversial entry. That entry in the Panshet log book runs :

"Still no report. But no danger. Carry on."

This message appears to have been transmitted some time after 22-42 hours, although the timing of transmission is not specifically noted in the log book. In the log book of the receiving station the message is recorded as follows ;—

"Still no progress of water. No danger", .

And this message is said to have been received at 22-46 hours. N. V. Marathe the originator of this message, in answer to questions in cross examination, stated that he received a message from Poona at 22-42 hours saying, "Please inform immediately whether any danger at Panshet". Marathe states that he immediately gave a reply saying, "Still no report but no danger". The expression 'no report' clearly shows that the operator was sending a report on his own and that there was no official backing for the same. Marathe has tried to get over that difficulty by giving an extraordinary explanation viz., that One P. W. D. officer who was sitting by his side told him that there was no official report and at the same time added that there was no danger. This explanation is self-contradictory. If the P. W. D. Officer himself says that there was no danger, evidently that was a report and evidently again that was an official report. Marathe proceeded to explain that the P. W. D. Officer mentioned by him was Panse. He admitted that he had received no further information about the condition of the dam. To a suggestion put to him, "it is not true that he wrote the words 'no danger' on his own", he denied the same and stated that Panse who was sitting by this side told him that there was no danger. When asked to explain why he did not obtain a writing from Panse, he contented himself by saying that he did not obtain a writing because Panse was sitting by his side. He then gave a most important admission saying that he used to send even unofficial messages and it was not his business to ascertain whether the message was official or unofficial. He admitted that the work of sending messages was a responsible job and he knew that only authorised messages should be transmitted. Two things emerge from these statements. One is, that although in a general way the version appearing in the log book of the receiving station should ordinarily be regarded as more authentic, still that general proposition would not hold good when we have positive evidence of the operator who himself initiated the message and stated that he used the words 'still no report but no danger'. Of course, I must hasten to add that at a later stage of the cross examination, in order to bring himself in conformity with the theory that the version in the log book of the receiving station is more accurate, Marathe stated that the message recorded in the Poona log book at 22-46 hours as 'Still no progress of water. No danger' is more correct. Secondly, Marathe himself has admitted that he was sending even unofficial messages. This is supported by what is contained in the message itself viz., "Still no report". In spite of this, Marathe has the audacity to say that he had the report from Panse, who himself told him that he had no official report, but that there was no danger. If Panse did not have an official report, he would certainly have obtained it within a short time. Without obtaining any report, it is impossible that he would take the risk of informing that there was no danger. Again the expression 'no danger' is not unqualified. It must necessarily be qualified by the word 'still' which applied to both parts of the message, viz., 'no report' and 'no danger'. As I have laboured to show that the one refrain running through all the messages recorded in (Ex. 383), the Poona W/T log book, was that the dam was *still* safe, meaning that the dam had not yet toppled down or overtopped. It may finally be pointed out that after all, this message went from Panshet at 10-42 p.m. and received at Poona at 10-46. It is impossible to assume that the same situation continued through the whole of the night particularly when admittedly other messages were sent and received.

It is necessary to refer to some of the entries in (Ex. 383), the Poona Log Book and (Ex. 314) the Panshet Log Book in another connection. The message put out from Poona to Panshet at 22-39 hours says: "Inform immediately whether any danger at Panshet. Reply immediately". V. D. Khandekar, the head operator in his deposition, states that this message was

transmitted because one officer from the Defence Academy rang him up and said that the Panshet dam had breached and, therefore, asked him to obtain the latest information. He adds that the reply received by him at 22.46 hours saying, 'Still no progress of water. No danger', was communicated to the N. D. A. on phone. It is significant that Khandekar is not mentioning anything about this in his written statement. The story, therefore, is evidently an improvement upon his written statement. Beyond the bare word of Khandekar, there is no evidence to show that this message was sent at the instance of an officer from N. D. A., nor is there any evidence to show that this message was communicated to the N. D. A.

Khandekar further says that at 23.52 hours again some person from N. D. A. phoned him and told him that some villagers from Kondhave Dhavade and had assembled at the Assembly Hall at the Academy and asked him to obtain information about the position of the dam. He further says that the reply received by him at 23.52 hours saying, 'Please refer your query-Panshet Dam still safe' was communicated to the N. D. A. On this point also we have to rely upon the bare word of Khandekar. As against this, it is necessary to remember that there is an entry in the Panshet log book (Ex. 314) in regard to a message which was received at Panshet at 23.27 hours and put out from Poona, which reads thus :

"It is learnt that water has reached upto Kondhave Village. Please contact higher authorities immediately and confirm whether it is a fact. Treat this as most urgent."

It is significant that there is no entry corresponding to this in the Poona log book. I am inclined to the view that Khandekar is either out of forgetfulness or deliberately trying to make a confusion between the message sent from Poona some time before 23.27 hours and the message sent out from Poona at 23.52 hours saying, 'Any danger at Panshet'. Marathe has admitted and in fact no admission is necessary because the timings themselves clearly show that these two messages have no connection whatsoever and they are independent. Khandekar further asserts that the message put up by him at 23.53 hours saying, 'Please confirm from higher authorities whether water has gone to Kondhave Village', was also at the instance of the N. D. A. (Ex. 383). This message, however, does not find place in the Panshet Log Book. According to Khandekar the reply to the above message was received at 23.54 hours saying, 'It is from higher authorities report that Panshet dam still safe. Lake level 2067.50 feet.' and this message was also communicated to the N. D. A. Here again there is nothing to support Khandekar's statement that this message was at the instance of N. D. A. authorities and its reply also was sent out to them. It appears to me that the only message which was perhaps put out at the instance of the N. D. A. might be the message recorded in the Panshet Log Book. (Ex. 314), as having been received at 23.27 hours saying, "It is learnt that water has reached upto Kondhave Village. Please contact higher authorities immediately and confirm whether it is a fact. Treat this as most urgent". Khandekar, however, does not speak about this. Khandekar has, however, surprisingly stated that he had made no enquiries about the water having gone to Kondhave Village at any time. This admission coupled with the circumstance that the message put out at 23.53 hours from Poona saying, 'whether water has gone to Kondhave Village', does not find place in the Panshet log book, shows that the only message which is likely to have been put up at the instance of the N. D. A. authorities has not been put up from Poona at all. Khandekar's anxiety not to associate himself with any enquiry about water having entered Kondhave Village can be explained if we remember that such an enquiry, according to the Collector, was made

by Major Khader Ahmed himself and in that enquiry Khader Ahmed had stated that the Panshet dam was in danger. In this connection, we may refer to a passage at paragraph 31 of the written statement of Prabhakar which runs thus :

“ After 11.30 p.m., Major Khader Ahmed, Security Officer of N. D. A. Khadakwasla rang me up. He said that the villagers of Kondhave, Dhavde and Shivne, which are just outside the N. D. A. campus, had entered the campus because they had been warned by the Talathi to evacuate their village as Panshet dam was in danger. I requested Major Khader Ahmed to allow the villagers to remain in the Academy campus till next morning.”

Three things are clear from this. The first is that Major Khader Ahmed had learnt that the Talathi had warned that there was danger to the Panshet dam as a result of which the villagers of the three villages went into the N. D. A. campus. The second is that the Collector not only did not tell him that there was no danger to the dam, but, on the other hand, requested Major Khader Ahmed to allow the villagers to remain in the Academy till the next morning. The third point is that the enquiry in this connection was made by Major Khader Ahmed to the Collector himself and not to the operator. It is significant that the Collector did not tell Major Khader Ahmed that there was a wireless station set up at Panshet and that he should make inquiries with the wireless headquarters at Poona. The very fact that Major Khader Ahmed made inquiries with the Collector direct at an odd hour of the night, i.e. after 11.30 p.m. shows that he was not aware of any wireless station having been set up at Panshet or Khadakwasla. If he had known at least that there was a wireless station at Khadakwasla, he would have made inquiries with that station which was so near to him. The evident object of Major Khader Ahmed was to ascertain from the Collector as to whether there was real danger to the Panshet dam and the Collector indirectly confirmed that the danger persisted by telling him that the villagers should be allowed to remain in the Academy campus till the next morning. The Collector was cross examined on this point and he said :

“ I did not enquire from Major Khader Ahmed, Security Officer, N. D. A., Khadakwasla, whether the Talathi of Kondhave and Shivne also had taken shelter in the N. D. A. campus along with the villagers on the night of the 11th. The Mamlatdar of Haveli Taluka must have instructed the Talathi of these villages to evacuate the villagers. I cannot say whether the Mamlatdar also instructed that the dam was in danger. I did not ask Khader Ahmed as to why he was saying that the dam was in danger.”

The fact that the Collector did not think it proper to ask Major Khader Ahmed as to why he was saying that the dam was in danger, shows that the news did not surprise the Collector and that the Collector was aware of the position that the dam was in danger. At a later stage also the Collector said :

“ I did not point out to Major Khader Ahmed when he rang me up after 11.30 p.m. on the 11th that the Panshet dam was in danger. I did not tell him that the Panshet dam was not in danger, and that the information was incorrect.”

Khandekar is deliberately vague when he says that some officer from the N. D. A. made inquiries with him. This evinces an anxiety on his part to keep away from Major Khader Ahmed, the Security Officer, N. D. A.

It has been argued on behalf of the civil authorities that Khandekar's statement that he informed the N. D. A. authorities that there was no danger is corroborated by the entry in the patrol book Ex. 861 of head constable

R. A. Kulkarni. Kulkarni records the following information under the time 10.15 to 12 mid-night (rendered in English):

“The officiating talathi Kondhave today informed that water would overflow from the Khadakwasla dam and that there was danger to Panshet dam, and therefore, the villagers of Khondhave should be evacuated. Accordingly they were evacuated. In the meantime, the Security Officer, Major Khader Ahmed informed that people from the village had entered the N. D. A. campus and that there was no danger to the dam and, therefore, the people should stay on the Dhobi Ghat. Arrangements were made accordingly.”

It is pointed out that Major Khader Ahmed, the Security Officer, informed the villagers that there was no danger to the Panshet dam. It is suggested that Major Khader Ahmed must have got this information from the operator Khandekar. As pointed out above, on the Collector's own admission Major Khader Ahmed told him on the phone that there was danger to the Panshet dam and that actually the Collector asked him to keep the villagers in the campus for that night. There is no evidence to show, apart from Khandekar's uncorroborated word, that Major Khader Ahmed or any other officer was informed that there was no danger to the Panshet dam for that night. At any rate, the Collector did not suggest to Major Khader Ahmed that he did not know the latest position and, therefore, he should make inquiries with the wireless headquarters at Poona. In the absence of any such suggestion, it is difficult to understand why Major Khader Ahmed or any one from the N. D. A. should approach Khandekar as if he had his own doubts of what the Collector told him. Actually what the Collector told him confirmed Major Khader Ahmed's information that there was danger to the dam, though indirectly. I am inclined to the view that there is some mistake in what is recorded in the patrol book of R. A. Kulkarni.

It is argued that Major Khader Ahmed should have been examined by the Commission. The Commission has had no means of knowing that Major Khader Ahmed would be an important witness on any matter. The patrol book of R. A. Kulkarni was exhibited at a late stage of the proceedings. It was the duty of the Advocate on behalf of the Civil authorities to have pointed out to the Commission that Major Khader Ahmed's evidence would be important and, therefore, he should be examined. The statements contained in the patrol book cannot be treated as gospel truth, particularly in view of the other contemporaneous record, which would be referred to presently.

Ex. 1193 are extracts of Davandi Registers of several villages. (The extracts quoted below are rendered in English). The Davandi was given at the instance of the village Kamgar at 11 p.m. on 11th July 1961, which reads thus :

“People are informed that there is a likelihood of heavy floods coming to Mutha as there is a danger to the Panshet dam. People, therefore, should be vigilant and be prepared to move away from the river to higher plateaus with cattle and moveables in case of heavy floods.”

The Davandi register of Shivane shows that the following announcement was made at 1.30 a.m. to the villages :

“People are hereby informed that there was a likelihood of heavy floods coming to the river as there was danger to the Panshet dam.”

The same register shows that a similar announcement was made at 10 p.m. to the villages at Barje, at 8.30 to the villages of Hingne Bk., at 8 p.m. to the villagers of Kothrud and Kharadi, at 10 p.m. to the villagers of Khadak and at 4 p.m. to the villagers of Nanded,



Ex. 1192 are extracts of the diaries of the village Talathis of several villages. The entry in regard to village Kothrud shows in part (rendered in English) :

“ Heavy floods to Mutha river are likely to visit Shivane village. Therefore, at 1-30 warnings were given to people to go to safe places. Before this warning could be announced by beat of drum people had already gone to safe places.”

Here it is necessary to remember that the villagers of Kondhave-Dhavde and Shivane had gone to the N. D. A. campus and stayed there for the whole of the night. The Collector had requested Major Khader Ahmed to keep them at the campus. The diary entry at Ex. 1192 clearly shows that the villagers of Shivane had already gone to safe places. All these circumstances go to show that the contents of Ex. 861 could not be true. If the villagers of Kondhave were asked to disperse and they actually dispersed, the same would apply to the villagers of Shivane. There is no evidence to show where the Dhobi Ghat, which is referred to in Ex. 861, lies. On the point as to where the villagers of Shivane were actually shifted from the N. D. A. campus, we have got the admission given by Dandavate, which is to the following effect :—

“ On the 11th night, I learnt that Shivane villagers had gone to the N. D. A. building for shelter. That is why I informed the Mamlatdar, Haveli at 8 a.m. on the 12th that they should not be shifted from the N.D.A.”

This clearly shows that the villagers of Shivane remained at the N. D. A. campus through the whole of the night. It is, therefore, clear that though the entry in the patrol book of Kulkarni mentions ‘ Arrangements were made accordingly ’, the villagers of Kondhave-Dhavde also continued to stay in the N. D. A. campus along with the villagers of Shivane. They were permitted to do so by Major Khader Ahmed, because the Collector did not contradict his statement regarding danger to the Panshet dam.

It is surprising that an attempt is made to connect a very stray entry in Dandavate’s jottings at Ex. 831 with Khandekar’s version that N. D. A. was informed that there was no danger to the dam. The first entry on the left hand side of the jottings at Ex. 831 contains the following letters : ‘ NDA ’. If Dandavate’s evidence is to be believed, then the entries on the left hand side have relation to 12-7 and not to 11-7, and Dandavate clearly says that the N. D. A. entry was made by him at 9-45 a.m. Dandavate’s explanation is that the words :

“ N. D. A.  
(Shivane)  
Panshet  
Haveli  
Haveli instructed ”

mean that Shivane villagers had gone to N. D. A. building because of fear of danger to the Panshet dam and in that respect he gave information to the Mamlatdar, Haveli. In any case, it is clear that Dandavate has nowhere said that the N.D.A. were informed that there was no danger to the Panshet dam, nor is there anything in the jottings to suggest this inference, even in an indirect way.

Mr. Khandekar, head operator, Poona, was asked questions by Mr. Murudkar with reference to the entries in the Panshet log book of the date 12th July 1961 (Ex. 371). The relevant entry, on which the question centred runs thus :

“ 06-05 hrs.  
What is the situation at Panshet ?

Situation at Panshet is as before.

Normal ?

Not normal."

No reference was made in this cross-examination to the entries in the log book of Poona which is the receiving station. Mr. Murudkar obtained special permission to cross-examine the witness with reference to the entries in the Poona Log Book and also as to who initiated the queries which are the subject matter of these entries. Accordingly the extract of the Poona Log Book was exhibited at Ex. 371A. The entries in the Poona Log Book read thus :

"What is the situation at Panshet ?

Situation at Panshet is as before.

Normal ?

Yes Normal."

Code words have been used both in the Panshet log book and Poona log book before the word 'normal' which is the last answer. The code word used in the Poona Log Book is 'PUE' which means 'Yes', and the code used before 'normal' in the Panshet Log Book is 'PUG' which means 'not'. Admittedly, the words that were transmitted from Panshet were code words. Although the ordinary rule, viz. that the entries in the log book of the receiving station should be treated as more authentic is accepted, still, the possibility of the code word 'PUG' which was being transmitted from Panshet being heard or interpreted wrongly at the receiving station at Poona cannot be ruled out. If the message that was transmitted from the Panshet station was really to be that the situation was normal, there was no reason for the transmitter to quote the word 'PUE' at all, because the mere word 'normal' would convey the meaning that was intended to be conveyed. The word 'PUE' which merely stands for 'yes' is simply redundant. The Commission asked questions to Khandekar in this connection. The questions and answers will throw a flood of light on this aspect of the matter. They are, therefore, re-produced :—

"To the Commission :

- Q. Don't you think that the word 'yes' before the word 'normal' was redundant ? If the only message was "normal", then that could be conveyed by using the word 'normal'. There was no need to use the word 'yes' before 'normal'. What have you to say to this ?
- A. Even if only the word 'normal' had been used, the purpose would have been served. I cannot say why the word 'yes' was used before the word 'normal'."

Finally it must be remembered that, as a matter of fact, the dam was overtopped within a short time after this message was relayed. Is it possible to imagine that the irrigation authorities would convey a message after 6 a.m. saying that the situation at Panshet was normal, just on the eve of the collapse of the dam ?

Then Mr. Murudkar proceeded to ask as to who originated the message from Poona and Khandekar in answer to these questions says :

"Some P. W. D. Officer from Inspection Bungalow made the query to me asking about the situation at Panshet. Accordingly I asked Shinde to make enquiry at Panshet. (At that time Shinde was the operator)."

A further question was asked by Murudkar to the following effect :—

"To whom did you communicate this message after it was received from Panshet ?"

This question was disallowed by the Commission because the witness was recalled for a specific purpose, viz., as to who originated the message about the

situation at Panshet and Murudkar raised a new question as to whom the message was communicated to. As a matter of fact, there was no justification for Mr. Murudkar in not asking the question as to the originator of this message, at the time of his first cross-examination. In spite of this, I granted him special permission for raising that question. At the time of asking the permission Mr. Murudkar did not tell me that he also wanted permission to ask the question, 'as to whom the message was communicated?' It is thus clear that Mr. Murudkar even strayed beyond the scope of the permission granted to him. That is why the question was disallowed. Furthermore, it is necessary to remember that it is nobody's case that the message, that the situation was normal, was communicated to any of the civil authorities. Neither Prabhakar, nor Mohite, nor Heble, nor Dandavate has stated that the said message was communicated. When Khandekar started telling that this particular message was at the instance of the query made by the P. W. D. Officers, the answer given by him struck to the Commission as extremely odd. Therefore, in order to test his memory, some questions were asked to him. The whole passage may be cited at this stage :

"Q. How do you remember that this message was originated by the P. W. D. authorities and the further fact that they were enquiring from the Inspection bungalow ?

A. There is no special reason for remembering these details.

Q. Whenever the S. E. was asking for information, the log book mentions that the S. E. has been pressing for information. Why is it not stated in the particular log message that the S. E. or the Additional Chief Engineer was asking for the information ?

A. It is true that log book entries do mention that the S. E. was pressing. I am unable to give any reason as to why the particular message does not mention the fact that the information was asked by the S. E. or other P. W. D. officers. I have not made any note anywhere nor have I spoken to any one about the fact that this message was initiated by the P. W. D. officers from the Inspection Bungalow.

Q. Would it be right to say that your memory is phenomenal ?

A. I can only say that I have a little memory, and from that I have told whatever I have told."

It is clear from the evidence of Khandekar that he has shown anxiety throughout to toe the line of the civil authorities and to oblige them by giving answers favourable to their case. It is sufficient to observe here that the operators are subordinate to the Superintendent of Police, Wireless, for the purposes of their duties as operators, but they are subordinate to the D. S. P., Poona City for the purposes of their pay and administration. This explains the attitude maintained by all the operators, including Khandekar, to go out of the way and stretch points in favour of the civil authorities.

Whatever that may be, the log messages have very little importance so far as their impact upon the action taken by the civil authorities is concerned. The only person among the civil authorities, to whom the messages were alleged to have been sent was Dandavate. I have already noted the discrepancies, in the evidence of Dandavate and Khandekar as to how many queries were sent by Dandavate and how many were replied to. I have also pointed out the fundamental discrepancy in the position taken up by Khandekar in his written statement and the position adopted by him in his deposition. According to the former, each message received from the civil authorities was transmitted on the wireless and each reply received as a log message was communicated to the civil authorities. At the time of the inquiry, he said that to

the queries made by Dandavate he only conveyed the substance of the information which he had received in his capacity as wireless operator. I have also pointed out the fundamental difficulty, viz., that there was no authorised communication between the wireless operators and the control room. Apart from these difficulties what we notice is that all but one message that Dandavate received related to the water levels and the only message relating to the Panshet situation alleged to have been received by him was 'No rain no danger'. As I have laboured to show, this message does not find place in any of the messages set out above, nor can the information contained therein or even its substance be said to follow from the messages received by the Poona Wireless Station. In fact, Khandekar has plainly admitted that he did not, either receive or communicate any message about rain or weather. As regards the message about 'no danger' I have discussed the position threadbare and I have pointed out that none of the messages indicated that there was no danger at Panshet. At best, some of the messages stated that the Panshet dam was *still* safe or that there was *still* no danger to the dam. Further, when we remember that there was no authority for Khandekar to communicate these messages, he would not take the responsibility of informing the civil authorities that there was no danger to the Panshet dam. That involves heavy responsibility because the action to be taken by the civil authorities would depend upon the messages. It is ridiculous to say that when so much depended upon the messages so far as the action to be taken is concerned, the messages would be communicated in an informal way and in violation of the rules and regulations. Finally, I have also pointed out that the most important message which is supposed to have been noted down on jottings at Ex. 831 by Dandavate was based on the information alleged to have been received by him at 1-00 a.m. and no information was received by him thereafter. I have also pointed out that this entry is highly suspicious and the presence of Dandavate in the control room itself is problematic.

### III. The knowledge of the Civil Officers about the situation

Although the above is the position relating to the messages, still the information received from the wireless is sought to be pressed into service to justify the departure of Mohite for Bombay by the Deccan Queen at about 7-25 a.m. From this point of view it is necessary to refer to what Prabhakar and Dandavate have to say about the information received by them. Full discussion on this question must await a later stage of this report because, as far as possible, I am proceeding to deal with the events in their chronological order.

I will first refer to what Prabhakar says in his written statement Ex. 422. At paragraph 31, he refers to the information which he got on the telephone about water levels at Panshet and Khadakwasla at 9-45 p.m. and 11-45 p.m. on 11th July 1961. At paragraph 33 he refers to the information which he got at 6-30 a.m. on 12th July 1961 on the telephone regarding the water levels at Panshet and Khadakwasla. At paragraph 34 he refers to the conversation which took place on phone between him and the Commissioner at 7 a.m. At paragraph 35 he speaks of his conversation with Damry on the trunk telephone which took place soon after his conversation with the Divisional Commissioner. At paragraph 37 Prabhakar says :

"After my telephonic conversation with Damry was over, Shri Dandavate, my Deputy Chitnis, telephoned me from the Emergency Control Room at the Municipal Corporation Building. He gave me all the information that he had received during the night regarding the condition of Panshet Dam and the water levels in the Panshet and Khadakwasla lakes.

Shri Dandavate told me that at 1-00 a.m. on 12th July 1961, he had asked the Police Wireless Station to obtain detailed information about the condition at Panshet. The information given to him at that time was that the water level at Panshet Dam was 67.50, there was no rain and that there was no danger to the Panshet Dam."

In other words, according to Prabhakar, Dandavate conveyed the substance of what has been noted in his jottings at Ex. 831. But it is significant that this information was conveyed to him after his talk with Mohite. It is not Prabhakar's case that after receiving information from Dandavate he had any talk with Mohite. Therefore, Dandavate's information, whether true or false does not affect the situation one way or the other. On the other hand, the last information about the situation at Panshet received by the Collector was from Major Khader Ahmed which was at about 11-30 p.m., wherein Major Khader Ahmed mentioned that there was danger to the dam. Actually Prabhakar ought to have proceeded on the footing that this was the latest information which he had got on the night of the 11th and the information which he received on the telephone at 6-30 a.m. only related to the water levels in the two reservoirs.

Mere information about the water levels is neither here nor there. It is clear from the evidence of the civil authorities that they were proceeding more or less in a mechanical manner without realising that mere information about the water levels conveyed no meaning and what was really important was the information regarding the difference between the level of water and the level of the embankment. In this connection I may refer to the answers given by Dandavate which typify the attitude of the civil authorities :

"When I went to the meeting, I had with me the levels at Khadakwasla and Panshet. I knew that the safety level at Khadakwasla was 34 ft. So when I learnt that the level in the Khadakwasla dam was 30.40, I concluded that there was no danger to the Khadakwasla dam. I could not, however, make out anything from the level of the Panshet Dam which was reported to be 67.40. However, I understood that statement to mean that the water in the Panshet lake was to a height of 67.40 ft. I could not make out whether there was any danger to the Panshet dam. I did not know whether 67.40 indicated the level of the embankment. Although I did not understand the meaning of the message, viz. that the Panshet level was 67.40, I did not ask the operator to explain its meaning. I gave the information about the water levels as soon as the meeting started. I gave the figures 30.40 Khadakwasla dam, 67.40 Panshet dam, as water levels, to the meeting. I do not know what the members of the meeting understood by these figures. I did not then know that 67.40 connoted the R.L. 2067.40. Even if I had been told that the original level of the embankment at Panshet lake was at R. L. 2075 and that the same was reduced to 2067.40, I would not have concluded that the dam was sinking . . . . . I agree that I did not understand the situation of the Panshet dam from the water level mentioned to me. I presume that the information that I might give regarding the water levels of Khadakwasla and Panshet dams might throw light upon the situation at Panshet and Khadakwasla dams. I again say that I refer to the situation of the water levels and not the situation of the dams. I know that an inference has to be drawn about the intensity of the floods from the water levels. Nobody said that he did not understand what was conveyed by the figures of the water levels. No doubts were expressed about these figures. I am unable to explain whether the members of the meeting were satisfied by the information given by me or whether they had any doubts in their minds about the information.

I did not point out to the Divisional Commissioner that although he was saying that there was danger to the Panshet Dam, according to the water levels which I had gathered, there could not be any danger to the Panshet Dam." (The quotation is not continuous).

Again at a later stage Dandavate stated :

"The information that I got at 11.15 about the water level at Panshet being 67.50 and of Khadakwasla being 29.80, was conveyed to the Corporation officers and the Police Officers. I communicated this information on phone to the two Mamlatdars. I have not mentioned this information in my written statement. I understood from the message received at 11.15 p.m. that the water level at Panshet had increased by 10 inches over the water level that was reported at 9.45 p.m. 0.10 means 10". that means that from 9.45 to 11.00 p.m. the Panshet lake had risen by 10". At no time did I make inquiries about the difference in the water level and the level of the embankment. I did not give any thought to this question. I do not know as to whether it was material to get the difference in the water level. My work was not to make any assessment of the danger to the dam by reference to the difference in the water level and the level of the embankment. But it was only to receive information and to act upon it. The only information that I was getting was about the water level and I was told that there was no other information. I could understand from those figures whether there was increase in the water level or there was decrease in the water level. I say that I was able to understand the significance of the figures regarding the water level conveyed to me in the messages". (The quotation is not continuous).

The witness was reminded of the answer given by him earlier that he did not understand the meaning of the figures regarding the water levels, which he had obtained before going to the Divisional Commissioner's meeting. He was thereafter asked, in view of the previous answer, whether he still maintained that he understood the significance of the figures which he obtained at 11.15 p.m. and 9.45 p.m. His reply was :

"I could not understand the meaning of water level in terms of danger to the dam."

In regard to Prabhakar's application of mind for understanding the situation at Panshet, it is sufficient to refer only to a few passages from his deposition. The following questions and answers will explain the position :—

- Q. What was your understanding of the situation at Panshet when Desai and Khursale told you that a portion of the dam was sinking that cement bags filled with Murum, sand and stone were being dumped, . . . . that as a result of this work the labour at Panshet was exhausted and, therefore, they required the help of the military engineering group for continuing the process through the whole of the night ?
- A. I did not feel that the sinking was continuous.
- Q. Did you understand their statement to mean that the process of sinking had stopped ?
- A. I did not think about that, and therefore, I cannot give any reply.

No information was conveyed to me on the night of the 11th, saying that the field officers at Panshet had asked for 10,000 cement bags from the Municipal and other authorities. Throughout the night

I was under the belief that the dam was safe. The basis for this belief cannot be attributed either to the ignorance of facts or wishful thinking.....

- Q. Did it not occur to you that since there was no reference in Bhalerao's reply [Ex. 375 (4)] to the present position, he had failed to communicate about the latest position?
- A. I assumed that there was no change for the worse in the situation of the dam. Nor did I assume that there was any improvement in the situation. I assumed that the situation had not changed, i.e. remained static."

The following passage from the evidence of Mohite is to the point :—

“Q. Will you admit that the principal ailment of the dam was that it had started sinking at a certain portion? Did you ever apply your mind to the question as to the effect of continuous sinking and also to the question whether the dam can ever be considered to be safe if sinking had not remained continuous?

A. I agree that the main ailment was that a portion of the dam had started sinking. I never knew that the sinking was continuous. I can, however, agree that the sinking was continuing.”

Again, at a later stage, Mohite says as follows :

“I do not think that we considered the night of the 11th as critical. It would not be correct to say that the decision to establish an emergency control room was taken because the night of the 11th was regarded as critical. There was danger to the dam and a remote possibility of the dam breaching. The normal channel of communication between a wireless station at Panshet and Poona will be the Bhamburda Police Headquarters. One of the objects of the control room was to receive messages from the Panshet wireless station. The control room was to receive messages from the Bhamburda Police Station and other sources. Emergency control room is not established in normal circumstances..... There was a possibility of the breach of the dam occurring during the night of the 11th.”

These answers indicate that the civil authorities never addressed their mind to the vital question about the precise nature of sinking and whether sinking was going on continuously or continually. They did not apply their mind to the question through the whole of the night as to what was the level of the embankment relatively with the level of water. This would have given a sure indication as to whether sinking was continuing or had come to an end. It seems that all through they were complacent. They made no serious attempt at appreciating the real danger of the situation.

#### IV. Arrangements for evacuation

It has already been pointed out that on the question as to how many vehicles were pressed into service on the night of the 11th, the evidence is conflicting and unsatisfactory. The log books which, even according to Heble would have afforded conclusive evidence, have not been produced. Sawant (Ex. 796)'s evidence shows that 23 vehicles had arrived at the Corporation building. So far as the question of requisition of the school buildings is concerned, the case for the civil authorities is that all the school buildings were requisitioned. The evidence adduced on behalf of the municipal authorities suggests that about 22 school buildings were requisitioned. It is, however, an admitted fact that no persons were kept in charge of these school buildings

to receive the evacuees. It is also interesting to note that, as a matter of fact, all the schools opened on the morning of the 12th as usual. As regards the keeping of what Heble calls a striking force of 120 policemen, the evidence shows that about 50 to 60 policemen were actually present. We have the reports of 54 constables who say that they were present in the Corporation building for that night. No explanation has been offered as to why the reports of the rest of the Police Officers have not been put in. It may be that a decision was taken that 120 policemen should go to the Corporation Building and actually only 54 policemen were mustered for that purpose. I will discuss as to how far these arrangements proved to be satisfactory to meet the flood situation on the 12th at a later stage of the report. At that time I will point out the numerous deficiencies in these arrangements. It is sufficient to point out at this stage, that even on the evidence led on behalf of the civil authorities, no person was kept in charge of the evacuation operations as such.

### V. Warnings

I will now proceed to the most important question relating to the warnings on the night of the 11th. The question about the nature of the warnings, the localities to which the warnings were given and how the warnings were given, are of vital importance in considering the question of the adequacy of steps. It is the case for the civil authorities as developed at the inquiry that the Divisional Commissioner's meeting decided in a general way that warning should be given to all the low lying areas by three agencies, viz., the Police, the Municipal Corporation and the Regional Publicity Officer. It was also decided in the meeting that the representatives of the three agencies should meet after the meeting was over to fix upon the text of the warnings and also in determining which are the other low-lying areas in addition to the traditional six low-lying areas. It is an admitted fact that the representatives of the three agencies never met after the meeting was over. The Regional Publicity Officer did not possess a loud speaker van. He could not, therefore, carry on the work of giving warnings. It is an admitted fact that the Municipal representatives moved on motor cycles to give warnings, but these areas were confined only to the traditional six low-lying areas. I will deal with the evidence relating to the warnings given by the Municipal authorities a little later. For the time being, I will concern myself with the warnings given by the Police Department, because the main burden of fixing upon the text of the warnings and determining the localities to which the warnings were to be given and the actual manner and method of giving warnings is said to have fallen on that department.

(a) *By Police.*—I have already referred to the evidence of the D. S. P. and also the Home Inspector as to how the text of the warning at Exhibit 427 was fixed. I have also set out the text of the warning at an earlier stage of this discussion. Before proceeding to the manner and method and the localities to which warnings are alleged to have been given by the Police Department, I may dispose of one small point and it is this : The warning at Exhibit 427 merely mentions danger to the dam. It does not refer to the fact that the dam was subsiding. Heble (Exhibit 525) was asked to say as to why this important factor was not mentioned in the Jahir Suchana and he stated :—

“ I did not mention the fact in Exhibit 427 that a portion of the Panshet dam was sinking because that would have created an unnecessary panic. I took this decision on my own authority. I again say that this decision was taken in the meeting (The witness again stated that the only decision taken in the meeting was that the warning should mention that there was danger to the dam). ”



The witness adds :

“ It was not decided in the meeting that the warning should not mention the fact of sinking for fear of creating panic. I now admit that again I took the decision, viz., that the warning should not make mention of the fact of sinking for fear of creating panic, on my own authority. I did not consult either the District Magistrate or the Commissioner before taking that decision. This warning purports to have been issued under the authority of the District Magistrate. I did not think it necessary to consult the District Magistrate because the lines on which the warning was issued were already decided upon. I do admit that the fact of sinking is included in the expression “ danger ” to the dam. Now I say that I did not specifically mention the fact of sinking because I did not think it necessary to mention it so . . . . . I admit that some panic would be caused because of the statements contained in the warning at Exhibit 427, viz., that the level of water had reached the danger mark and the Panshet dam is in danger. But the amount of panic would not be the same as would be created by the specific mention of the fact that a portion of the dam was sinking.”

(Quotation is not continuous)

At a later stage, he was asked to say whether he had any means of gauging the extent of the panic and he had to admit that he had none. It has been argued that the fact of subsidence was not necessary to be mentioned because people would not have understood the significance of any such statement. There is no substance in this line of reasoning. It was, of course, necessary to mention that the dam was in danger. It was also necessary to tell the people as to what was the cause of the danger to the dam. Had the warning mentioned the fact that the dam was sinking (the Marathi words : “ खचत आहे ” are more significant and powerful than the English word sinking or subsiding), people would have understood the real cause of the danger to the dam. The theory that greater panic would have been caused by the use of the words ‘ the dam was subsiding ’, has no legs to stand upon. It is desirable that a panic is created rather than make the people face an unprecedented situation created by tremendous floods, without any fore-warning. It has been argued that even in 1958, the warning did not show that there was a likelihood of the Khandakwasla dam breaching. Before making any comparison on this point, it is necessary to remember certain outstanding facts :

(1) Maydeo (Ex. 396) himself has stated that the possibility of the dam breaching was remote. As Mone (Ex. 406) put it, ‘ there was only a 5 per cent. possibility of the dam breaching ’.

(2) Chaturvedi (Ex. 840) has stated that the warnings were to be given in two stages (a) that there was likelihood of floods, (b) that there was a likelihood of heavy floods as a result of the breach of the dam.

It is true that Chaturvedi and Mone have spoken of avoiding doing anything which would create panic. It is also true that Mone has referred to Barve's talk which suggested to Mone not to take any step which would create panic. The theory of avoiding taking steps which may lead to panic is a typical manifestation of bureaucratic mind. It is valid only upto a limit, but becomes extremely dangerous when carried beyond reasonable limit. It is really vagueness and uncertainty regarding information, which creates panic and confusion in the minds of people. People must be boldly warned that they would have to face a danger. It is the experience of people in all the countries in critical situations like war etc. that their response is splendid when they are told the truth, howsoever unpalatable it may be. I, therefore, feel that it would have been much better if the warning were boldly to state that the dam was subsiding and that a situation of danger had been created on account

of subsidence and on account of the rise in the level of water. As a matter of fact, as I will point out later, there was no panic when the dam breached and water started rising in an unexpected manner. In any case, Heble took a tremendous responsibility on his shoulder when he took a decision that sinking should not be mentioned in the warning though no such decision was taken in the meeting.

I have already pointed out that so far as the text of the warning (Ex. 427), is concerned, it mentions only six areas, viz., Mangalwar Peth, Bhimpura, Pulachiwadi, Ashanagar, Sitaphal Bag and Amruteshwar. Exhibit 427 in so many words says that people living in the abovementioned areas are to be warned. Prabhakar had to admit that if the text of the warning (Ex. 427) [which would hereafter be referred to as (Ex. 427-A) to distinguish it from Chand's report, which will be referred to as Ex. 427-B] is taken singly, then, of course, it means that the warnings were to be confined within the six localities mentioned therein. Both he and Heble, however, have relied upon the endorsement made by Kekre. It is common ground between Heble and Kekre that the endorsement was not made by Kekre in Heble's presence. Kekre says that after the text was read over by him to the D. S. P., the latter gave him road boundaries and areas in which the warning was to be given. He added that he did not take down these boundaries on a piece of paper because he could remember the areas. He was, however, forced to admit that although he was familiar with the roads, he was not familiar with the areas. According to Kekre the endorsement which he calls 'an order to Chand was written by him in the Vishram Bag Wada. The endorsement reads thus :

"Head Constable Chand—traffic. The abovementioned proclamation should be announced by loudspeaker in all the abovementioned areas and also all areas adjoining the river."

It is significant to note that even in the endorsement, Kekre did not mention the road boundaries of the areas to which warnings were to be given. Not only this, but the areas besides the areas mentioned in Ex. 427A, are referred to as all the areas adjoining the bank of the river. Kekre was asked to say as to why he did not mention the road boundaries in the endorsement. His reply was :

"I cannot say. I, however, explained to head constable Chand the road boundaries."

When further asked to say, whether he could assign any reason as to why he did not mention the road boundaries, Kekre (Ex. 871) frankly admitted : "I cannot offer any explanation." Head Constable Chand in his deposition (Ex. 869) stated that Kekre orally mentioned to him the areas, which he was expected to visit for the purpose of giving warnings. He then mentioned a long list of these areas. In the first instance, he stated that he did not take down the localities and the areas mentioned to him on a piece of paper as he knew the localities of Poona very well and was confident that he would be able to remember these localities. Again he changed his position and said :

"I again say that I made a note of the localities mentioned by Kekre. I tore away that paper after I handed over my report to Kekre. I did not hand over that paper to Kekre along with my report."

It is evident that the contradiction has arisen because Chand is not prepared to disclose the truth. Having taken up the position that he had made a note of the localities, he had to go to the length of saying that he tore away the paper at the time of submitting the report to Kekre. No reason has been given as to why he did not hand over that paper to Kekre along with the report. The matter does not rest there. The words, 'all areas adjoining river' are

very vague and instead of supporting the case, which has now been sought to be made out, viz., that warning was to be given to all the low-lying areas, debunks any such story. The words 'adjoining the river' are very significant and by no stretch of imagination could they be extended to include localities, which are mentioned by Shaikh Chand as the localities which were referred to by Kekre, and he says were taken down on a piece of paper (according to the changed version). Kekre's attention was drawn to the words, 'and all the areas adjoining the river'. He was asked to state whether it would not have been better, instead of using vague instructions, the boundaries were mentioned. His reply was :

"I agree that it would have been better."

When further questioned as to why he did not do so, his reply was : "I cannot say." He then proceeded to offer an explanation by saying that he knew and that Chand also knew and hence it was not necessary to mention the boundaries. A question was then asked to him to say why did he feel it necessary to use the words 'and all areas adjoining the river'. Kekre's reply was that he did so because he wanted to make the order complete and self-contained, so that it could speak for itself. A further question was then asked :

"If that was so, then why did you not mention the road boundaries."

The only reply was that he did not think it necessary. His attention was drawn to the anomaly inherent in the situation viz., the Jahir Suchana mentioned six localities, the oral directions mentioned localities with road boundaries which went far beyond the localities mentioned in the Jahir Suchana, and finally the written order of Kekre vaguely mentioned 'and all other areas adjoining the river'. Kekre was offered an opportunity of giving his explanation and his reply was : 'he could not say'. When he was asked to say whether Heble realised the anomaly inherent in the situation, his reply was :

"He must have realised this 3/4 days after the failure of the dam when he saw that (the Jahir Suchana)."

The entire confusion has arisen because a belated attempt has been made to show that warnings were given to more areas than mentioned in Ex. 427. In my view, the order written by Kekre below Ex. 427A, in no way, improved the situation as it referred to the areas adjoining the river in addition to the six localities mentioned above. Ordinarily, the expression adjoining the river means contiguous to the river.

According to Kekre, Chand went out with the text of the Jahir Suchana with the endorsement made below the name (Ex. 427A) and a note wherein he is supposed to have taken down the road boundaries as mentioned by Kekre. It is the case for the civil authorities that Chand moved in a van fitted with loud-speaker, BML 4771, for giving the warnings. S. Y. Kamble was the driver of that van. It is further their case that Chand moved in this vehicle from 8-30 p.m. to 1-10 a.m. in the areas mentioned by him in his deposition. It is further their case that it was he alone who did the work of announcing the warnings to the people in all the localities through which he moved. Finally it is their case that at the end of his journey Chand went to the bungalow of Kekre and wrote out the report below the document itself (which is given a separate exhibit number as Ex. 427B). It is necessary to scrutinise the evidence of Kekre and Chand and the entries in the log book Ex. 540 closely with a view to see how far the evidence afforded is reliable.

Kekre explains that he gave general instructions to Chand asking him to stop the van at a distance of 50 to 60 paces and at each stop to read out the text of the warning twice or thrice. He further says that he asked Chand to

read the text after the portion 'All these people have been informed'. This is all the evidence of Kekre on the point. Chand says that Kekre had instructed him to read out important portion of the Jahir Suchana. Chand then asked Kekre, which, according to him, were the important portions in the document which he wanted Chand to read. Chand says that after Ex. 427 was handed over to him he went through the document. Kekre then asked him to read the document loudly, saying that he wanted to take recitations twice or thrice from him and see whether Chand was able to recite it properly. Accordingly Chand read out the document twice or thrice. Kekre then explained to Chand that he (Chand) should read it out in the same tone as he was doing in Kekre's presence. Chand was then asked to say whether he understood the meaning of the words used in the Jahir Suchana. He admitted that he did not fully comprehend the meaning of the words 'filled to the brim'. He, therefore, asked Kekre the meaning of those words. He then explained that *prima facie* he thought that these words indicated that water had come to the level of the embankment. He, therefore, says that because of this understanding of his, he asked Kekre to give an explanation of those words. Kekre explained those words to mean that the water had gone beyond the danger zone. Chand then explained the manner in which he made the announcements thus :

"First of all, I used to read the document in full. I used to read the words, 'filled to the brim' as they were. Some people who wanted explanation of those words asked for explanation and, whenever they asked, I used to tell them that by these words it is meant that the water had gone beyond the danger point. Some people asked me as to what was the danger point. I told them that by the danger point, I meant the point that was fixed upon by the engineers as the danger point. Nobody asked me as to what was the danger point fixed upon by the engineers. I understood by the words 'the dam is in danger' to mean that the dam would breach. I used to tell the people that the dam was likely to breach. Some people were laughing at me when I said that the dam would breach. They were saying, "the police have no work to do, they are without occupation and, therefore, they are telling these absurd things". Such things were told to us at Shanwar Gate, Bhimpur and Mangalwar Peth. It is only in these two places that people laughed at these things. I did not tell the scoffers that it was a serious matter and not a matter to be laughed at. That was because I was in a hurry."

If Chand's evidence is believed, it means that not only he read out the text of Ex. 427A, but that he was called upon to explain the meanings of certain words and that he did give explanation in regard to the same. He would have us believe that at least in three localities, Shanwar Gate, Bhimpura and Mangalwar Peth, the people assembled ridiculed him at the statements he was making. The words attributed to the scoffers are very significant. They are :

"The police have no work to do, they are without occupation and, therefore, they are telling these absurd things."

According to Chand these comments were offered when he was mentioning that the dam was likely to be breached. It is difficult to believe that, when in all seriousness a policeman was moving in a jeep with the express object of announcing the warning to the people of the impending danger the people would not only be not prepared to accept the word of the policeman on trust but would go to the length of scoffing at him and saying that the police were without occupation and, therefore, they were spreading such absurd things. There is no reason why people should consider the news that the dam was likely to breach as absurd. One can understand the statement made by some citizens that on the next morning when they were informed that the dam had breached, they were not inclined to believe the same easily, because the issue

of Sakal for the 12th had announced that there was no danger to the dam. I feel no hesitation in saying that Chand is trying to connect the events of the 12th with the events of the 11th. It may be that the people would be taken by surprise at the news that the dam was likely to breach. It may be that people would ask questions as to what was the condition. It may as well be that some people did not know that it was an earthen dam and, therefore, would ask him as to why he was saying that the dam would breach. An announcer might possibly be required to explain that this was an earth dam and that it was filled to the brim and, therefore, was likely to over-flow and breach. But there is no earthly reason as to why people should reject the news as untrue and should go to the length of deriding announcer who was moving round with the express purpose of giving the grave news to the people in their own interests. From the manner in which Chand gave evidence, and also from the nature of the replies given by Chand, I am convinced that he is telling a falsehood when he said that people were trying to scoff at him during these announcements.

Before proceeding further, it is necessary to set out the contents of the report, which is a short document. Translated into English it runs thus :

“The announcement was made in traffic jeeps on loudspeaker as per the order in all the places mentioned therein and in the areas of Deccan Gymkhana Chowk, Tofkhana and Shivajinagar part behind the Court as also in all the areas on the bank of the river.”

“This announcement was made between 9 p.m. and 1 a.m. The announcement was made to the people by stopping the van at a distance of 50 ft. as per instructions.”

It is significant that even in this report Chand does not mention the localities which, he says, were mentioned to him by Kekre and which, as per his second version, he took down on a piece of paper. It is equally significant that he has added the words ‘areas of Deccan Gymkhana Chowk, Tofkhana and part of Shivajinagar behind the Court’. This is in addition not only to localities mentioned in Ex. 427 but also to the added localities in the order of Kekre. Kekre’s order mentioned : “and all other localities adjoining the river”. Those words have been retained in the report with the addition of ‘Deccan Gymkhana Chowk, Tofkhana and Shivajinagar behind the Court’. Either, all the areas with reference to road boundaries mentioned by Kekre and noted down by Chand on a piece of paper, should have found place in this report, or if the report was intended to be brief, it could have said, as Kekre’s order says, “all areas adjoining the river”, or it could as well have said that ‘all low lying areas’, as is now the case put forward on behalf of the civil authorities. One thing is clear that the three areas, viz., Deccan Gymkhana Chowk, Tofkhana and Shivajinagar do not adjoin the river nor have they been considered by Chand as adjoining the river. Otherwise, there was no need for Chand to make specific mention of them. Now, if Chand thought it necessary to make specific mention of these areas, he would not have failed to mention the other areas, which he now says he visited for making announcements, if he had really done so. If the areas are to be mentioned at all, they should be full. I will point out later that the additional areas mentioned in the report do not tally with the areas mentioned in the log book Ex. 540. Chand was cross-examined with reference to the incomplete mention of areas and what he has to say is better put down in the shape of questions and answers that took place :

“Q. Can you tell me why you have not mentioned in your report all the localities which you said you have noted down on a piece of paper and had visited for giving warnings ?

A. As the localities were many, I did not think it proper to mention all. There was no difficulty for me to note down all these areas. I was not also in a hurry. The areas in which warnings were given was an important matter. We always write our reports in brief. Brevity is the soul of wit. I was in no way exhausted at the end of my journey in the process of giving warnings. I admit that I was exhausted a little bit.

Q. You say that you are accustomed to make brief writings. Then why did you not write the report saying, 'I have given warnings in all the localities mentioned by you?' That would have been a brief document and still significant. Can you offer any explanation for the same?

A. I cannot explain."

These answers speak for themselves and no comments are necessary. For reasons, which I will explain presently, I am inclined to the view that the report was not submitted on that night at all, but must have been submitted some time on the 12th after the dam was over-topped. At that time the authorities, probably, felt that it would be enough to say that warnings were given to the six low lying localities and areas, such as, Deccan Gymkhana Chowk, Tofkhana and part of Shivajinagar behind the Court as also other areas adjoining the river. At that time probably they vaguely visualised that it would not be enough to say that warnings were given only to the six localities mentioned in Ex. 427A and it was necessary to include more areas. What those areas were had not yet been decided upon. As I have pointed out earlier, even in the written statements, it has not been stated by any of the authorities that it was decided that warning should be given in all the low lying areas and that warnings were actually given in all the low lying areas. What has been stated consistently is that warnings were given to the low lying areas. Chand in his evidence has mentioned a still larger number of areas besides the areas, Deccan Gymkhana Chowk, Tofkhana and part of Shivajinagar behind the Court. In fact Chand has mentioned all the areas in which water entered on the 12th as a result of the breach of the Panshet and Khadakwasla dams. The text of the Jahir Suchana, Ex. 427A, the endorsement below the same, the report made by Chand below the endorsement, Ex. 427A, the written statements of the authorities and the final case put up at the time of the enquiry reveal the progressive improvement of the stand of the authorities in regard to the localities. Their case has gone on improving from stage to stage. This alone explains the wording of the text of Ex. 427 and also the wording of the near contemporaneous document, such as the reports, Exs. 437 and 438, in relation to the description of the localities in which warnings were decided to be given or were actually given. I have also referred to the various admissions given by Prabhakar, stating that warnings were given only to the six low lying areas mentioned at Ex. 427A.

Before proceeding to the depositions of Kekre and Chand and the entries in the Log Book, it is necessary to refer to another very important document which can also come within the category of a near contemporaneous document coming from different quarters viz. the Municipal Corporation. I am referring to the note, Ex. 643, prepared by Darp, Assistant Municipal Commissioner and adopted by S. B. Kulkarni the Municipal Commissioner dated 16th July 1961. S. B. Kulkarni explains the circumstances in which the note, Ex. 643, was prepared :

"On the 14th or 15th (July 1961) the Collector asked me to prepare a note of the events leading to the heavy floods on the 12th of July and the steps taken by us to meet the situation so that it may be of use to the Chief

Minister for making a statement on the floor of the Assembly. I handed over the original note to the Collector for being handed over to Mr. Damry, Irrigation Secretary. Mr. Damry had, however, left for Bombay by plane before receiving this document. A copy of the note was kept in the file and that is the document which was just now shown to me (Ex. 643). After looking into the original, I noticed that I have made some corrections on the first page. Instead of 'myself', I added the words 'A.M.C.'. Similar corrections have been made on page 2 of the original. I asked Darp to prepare a note for me. Darp prepared the note wherein he had mentioned the part played by him and he mentioned himself in the first person instead of the third person as the 'Assistant Municipal Commissioner'. That is why I made these corrections. The note was brought to me after it became ready and then I made the above corrections and also certain other corrections. My attention is drawn to the word 'stet' written on page 3 of the office copy of Ex. 643. That means that the words as they appeared in type should be retained." (Ex. 638).

It is clear from the above, that although Kulkarni could not disown authorship of the document, Ex. 643, he was trying to shift the responsibility of the contents upon S. B. Darp who had prepared the document and who actually had taken part in the Divisional Commissioner's meeting and also in giving warnings and also in taking other measures. That being the case, Darp had to be recalled as a witness after Kulkarni's evidence was over, and Darp was cross examined with reference to the contents of the report Ex. 643 by the Commission on 7th June 1962. In his deposition Darp (Ex. 621) had stated that Kulkarni had dictated the contents of Ex. 643, that he had not submitted any report to the Municipal Commissioner. However, after recall, in answer to the very first question put by the Commission, Darp admitted that it was a slip on his part when he said that Kulkarni, the Commissioner, dictated the contents of Ex. 643 to his stenographer. He admitted that he prepared the note for being handed over to the Commissioner and the Commissioner converted the note into his own note by making necessary corrections.

Let me now analyse the contents of Ex. 643, so far as they are necessary for the present discussion. In the first part of paragraph 1 of the report six localities have been mentioned as under :

1. Pulachiwadi.
2. Sitaphal Bag.
3. Amriteshwar, Apte Ghat, Nene Ghat, etc.
4. Ashanagar colony.
5. Bhimnagar, and
6. Mangalwar Gadital.

The second part of paragraph 1 mentions that three officers of the Corporation viz. Kadam, Savant and Rane, were entrusted with the task of visiting the above areas and alerting the people. The second paragraph after referring to the steps taken by the Municipality between the 1st of July and the 11th of July speaks about the Divisional Commissioner's meeting held at 6-30 p.m. on the 11th. It then proceeds to say :

"In view of the danger that had arisen to Panshet dam, it was decided to get in readiness to meet the danger."

Incidentally, this falsifies Prabhakar's contention that there was only a possibility of breach of the dam and there was no danger to the dam at all. It then proceeds to speak of the location of the headquarters for conducting the operations of flood relief in Poona Municipal Corporation. By the way this document also does not use the words 'control room', nor does it speak that 'the headquarters in the Corporation building was to keep in touch with

than those six low-lying areas the D. S. P. would have made mention of those areas. The D. S. P. was cross-examined on this point and this is what he has to say in regard to the first page of Ex. 538

“ Three police stations are mentioned—

Faraskhana;  
Deccan Gymkhana ;  
Vishrambag.

On page 2 in all five localities have been mentioned. Pulachiwadi is mentioned under Shivajinagar. Sitaphal Bag and Amruteshwar are mentioned under Narayan Peth. On the right hand side are mentioned the schools and other buildings that were allotted to each of these localities. The jottings on page 2 were made on the basis of the account given by Darp regarding the flood situation of 1958. On page 1 at the left hand side are mentioned the localities under the three police stations which were affected by the floods of 1958. Under Faraskhana police station are mentioned Mangalwar Peth and Bhimpura. The whole of the Mangalwar Peth was not affected. Only the localities in Mangalwar Peth viz. Gadital and Bhimpura were affected.”

He was then asked to state whether the areas, Gadital and Bhimpura, Pulachiwadi, Ashanagar, Sitaphal Bag, Amruteshwar, Nene Ghat and Apte Ghat are the only areas which could fall in the category of low-lying areas. To that Heble gave an extraordinary reply that the definition of ‘low-lying area’ would vary according to the extent of the floods. Heble’s explanation that the localities mentioned on the first and second page of Ex. 538 were the localities affected during the floods of 1958 as per the account of Darp, is obviously false, because on the first page definite police force was assigned to each of these localities and this could only have relation to the situation in 1961. In the same way, definite schools have been allotted to definite localities on page 2 and this allotment could only have a reference to the situation in 1961. As regards the mention of five localities in Ex. 539 (Photostat copy, P-1117-A) it is noteworthy that specific figures have been mentioned against each of these localities and the total comes to 6,500. It is now the case of the civil authorities that Darp mentioned 6,500 as being the population of the five localities mentioned therein. It is further their case that, according to Darp, out of this population only 2,500 were affected by floods. The figure 2500 does not appear on this paper. Heble says :

“ He (Mr. Darp) mentioned orally that out of 6,500, 2,500 were actually evacuated. I did not mention that figure in that note because my notes were not intended to be exhaustive. I would not accept the suggestion that the figure 6,500 was mentioned with a view to make preparation of evacuation for much number. I cannot say that the Collector carried the impression that the number of persons that may have to be evacuated was 6500.”

I will refer to the Collector’s impression in regard to the number of persons who were likely to be required to be evacuated being 6,500 at the time of discussing the question of evacuation. For the time being, it is sufficient to note that the distinction between the number of persons that were evacuated was 2,500 in 1958 and the number of the population of the five localities, which was according to Darp and others was 6,500, has no basis in any of the contemporaneous documents and this distinction has been trotted out with a view to explain away the circumstance that 6,500 was the contemplated number of persons who would have been required to be evacuated during the floods of 1961. If that position is conceded, then it means that the areas mentioned in Exhibit 539 have reference to the areas that were likely to be affected by



ex 539

3

Ashwajun	5 00
Bulchikurda	10 00
Silajit Gaj	15 00
Mumukshwan	1 00
Mangalwan Bhu	30 00

E 539

65 00 Total

Exh. S. No. 539

Commission of Inquiry,  
Pawhet and Khadakwasala Dams, Poona.  
Recd and recorded on (Original retained  
and copy exhibited.)

9/5/62  
Commission of Inquiry

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the floods of 1961 and not merely the areas that were actually affected by the floods of 1958. It was wholly unnecessary for Heble to make a note of the population of the so-called five areas. Darp himself has admitted that there is nothing to show that 6,500 is the population of the 5 or 6 low-lying areas. Reading the documents as they are and taking into account the fantastic character of the statements made by Heble and Darp and reading them in the light of Prabhakar's admissions, to which a reference would be made hereafter, it is clear that the areas mentioned in Exhibit 538 and 539, again tally with the areas mentioned in all other documents or near contemporaneous documents, which means that all preparations including the giving of warnings were made with respect to only the six traditional low-lying areas.

I will now revert to the evidence of Chand. In answer to question by Mr. Phadke on behalf of the Citizens' Committee. Chand stated that he was the only person who read out the Jahir Suchana in all the places where the vehicle stopped. He admitted that he must have read the Suchana for more than 200 times. According to him, wherever he stopped and started announcing the warning, crowds used to collect, the number varying from 5 to 50. He asserted that he read out the portion of the text at every place. In answer to further questions, he admitted that people used to ask him as to what was the danger to the Panshet Dam and he used to tell them that the water in the lake was rising and there was danger of floods. A little further, Chand stated :—

“No other van fitted with loud speaker moved on that night for giving warnings to the people. Mine was the only van that was giving the warning. On about 10 or 15 times, constable Shaikh was also asked to make announcement on my behalf. I asked him to do so because, occasionally, I used to feel exhausted. I was especially called and entrusted with the work of giving warnings because I have got a clear and loud voice and because I often do the work of giving warnings.”

(The quotation is not continuous).

At a later stage, he stated :

“I had stopped near the Deccan Gymkhana Chowk and near the post office also. I made the announcements at these spots. About 60 or 70 persons gathered together round near the Deccan Gymkhana Chowk. Most of them were Riksha drivers or Tongawalas. I went there at about 12-30 night. Thereafter, I stopped the vehicle on the Jungalee Maharaj Road near the Bus stop. The maternity home of Dr. Madhu Malati Suru is about 13 paces away from the Bus stop. The nursing home of Dr. Phadke is opposite the bus stop. The Nursing Home of Dr. Bodhe is by the side of the bus stop of P. M. T. I stopped near the P. M. T. bus stop and made the announcement. This was at about 12-20 or 12-25. Ten or 12 persons gathered near the van. The announcement made by me must have reached the ears of the inmates of the Nursing Homes of Dr. Madhu Malati Suru, Dr. Phadke and Dr. Bodhe. If any one from these maternity and nursing homes were to say that no warning was given on the night of the 11th, then, I declare that they are telling lies.”

The time occupied in moving around all the localities and making announcements, according to the witness and also according to the entries in the log book, Ex. 540, was between 8-30 p.m. and 1-10 a.m. That means that the time taken was 4 hours and 40 minutes. The witness admits that he stopped at 200 places. He has admitted that he used to read the text at every place. First of all, he would call the people ‘Oh, people come and hear’. Then the people used to collect. Thereafter the text was read out. People then

used to ask him questions and he used to give replies. At some places he was scoffed at. Even if these occasions were he was scoffed at are left out of account, still the bare reading of the text in a low and deliberate manner so as to make itself understood by the listeners would take about 3 minutes, which comes to 10 hours. It is, however, clear from the evidence of Chand, and it stands to commonsense also, that after calling the people some time would be required for people to collect. If this is taken into account every occasion is bound to extend to at least 5 minutes, which means that 1,000 minutes would be required. In terms of hours that means to about 16 hours. The matter does not rest there. He says, there used to be questioning and discussions and on some occasions he used to be ridiculed. If all these factors are taken into account, the itinerary of Chand must occupy about 24 hours. In any case, it is impossible that it would be finished within 4 hours and 40 minutes as is sought to be made out in the log book Ex. 540. Again in the beginning, Chand boasted that it was he who read the announcement on each occasion. But under the impact of cross-examination he had to admit that he felt exhausted and, therefore, asked constable Shaikh to make announcement, at least on 10 to 15 occasions. Finally, Chand's contention that he stopped his car near Deccan Gymkhana Chowk and also near the P. M. T. bus stop and read announcements at 12-20 or 12-25 p.m. is weakened by the evidence given by Dr. Madhu Malati Suru and Dr. Bodhe (Exs. 102 and 887), and Chand has the audacity to say that if any one says that warnings were not given on the night of the 11th, then he is telling lies. No further proof is needed for declaring Chand as a tutored witness.

With a view to corroborate his testimony, Chand stated that he had made entries in his note book about the work done by him on that night, and the note made by him showed the places he visited on that night and also the work done by him. When asked to produce the note book, he gave an interesting reply :—

“That note book has been washed away. I again say that I had made the entries in the note book on the morning of the 12th and I had put that note book in the pocket of the uniform which I was wearing. I had gone to the locality near the Training College at about 1-30 p.m. I plunged into water with a view to rescue some people who were being drowned in water in the compound of the Training College. I actually rescued two persons from that place. At that time, my uniform was drenched. As I was taking out my clothes, I noticed that the note book was missing. I had kept the note book in left hand pocket of my short. I again say that I continued to put on the uniform till 4-30 p.m. After going to the Vishrambag Wada station, I put my hand in the pocket of the short in search of the note book. Then I realised that the note book was missing. On the 17th, I made a report stating that my note book has been washed away. I made that report to the Traffic Inspector Nikam. I cannot say whether he is in possession of that report.”

To ask any one to place reliance upon such evidence is to insult his intelligence. Yet, in all seriousness, not only the Advocate on behalf of the Civil authorities but also the Commission's Counsel have argued that Chand's evidence is trust-worthy and should be accepted as gospel truth. Of course I will refer to the entries in the log book which, according to these Advocates, completely and fully corroborate the evidence of Chand.

That takes me to the entries in the log book (Ex. 540) (photostat copy, P. 1123-A) According to Chand, the driver of the jeep, i.e., Kamble, wrote out the entries in the log book. In addition to the driver and himself, there were two Constables sitting in the jeep. Realising that the admission at first given



by him, viz., that the driver wrote out the entries in the log book, would fasten responsibility upon him about the contents in as much as he had put his signature in the signature column, Chand changed his stand and stated :

“I do not know whether the entries in the log book for that night were made by the driver at any time. I had no occasion to make any enquiries to that effect. The practice is that the driver makes the entries after reaching the M. T. Section. S. Y. Kamble was the driver of the jeep. He is also a Constable. When I made the signature in the column for signature in the log book, no entries were written by the driver. I put my signature in the signature column according to the usual practice. I have been following the practice of putting my signature in the remarks column without entries being written since long, and it is not because I have trust in Kamble that I agreed to put my signature in the signature column. The person at whose disposal the van is placed has to sign the log book. On the original log book of Ex. 540, I have put my signature and this is the signature to which I referred sometime back. I have not read the entries at any time before.”

We are told in all seriousness, that it is the standing practice in the police department that the constable puts in his signature in the signature column before entries are made in the log book. On the face of it, it is not possible to say in whose hand-writing the entries are made. I may hasten to add that as regards the entries in column No. 7, to which I will make a detailed reference hereafter, the entries are in the handwriting definitely of two persons. Whatever that may be, Chand, being the user of the vehicle and having attested the document in that capacity, must take responsibility for the contents thereof. At this stage, I may refer to Rule No. 463(2) in Chapter X Volume III of the Bombay Police Manual (8th edition) :—

“The details of each trip should be entered in the log and attested by the user (or by the user and the gazetted officer superior to him respectively, if the user is a non-gazetted servant) after each trip or at the end of the day, as may be convenient.”

In the present case, as the user is a non-gazetted officer it was necessary that his superior gazetted officer should also have put his signature. The absence of the signature of the superior gazetted officer makes the document highly suspicious. In the face of these clear provisions, it is surprising that the Commission's Counsel should argue that questions relating to the entries in the log book at Ex. 540 ought not to have been asked to Shaikh Chand, and it was necessary to examine the writer of the document. It has been forgotten that the name of the writer transpired only during the evidence of Chand and that writer is no less than S. Y. Kamble, the driver of the jeep. S. Y. Kamble cannot be regarded either as the user of the vehicle or as the author of the document in any sense of the term. It may be that the writer, if his name had been known, could also have been questioned as regards the entries. But it is idle to contend that the user of the vehicle and the attestor of the document could not be questioned as regards these entries merely because he (Chand) has the audacity to say that he put his signature before the entries were written out. The only and proper course to follow, as men of commonsense and experience, would be to reject Chand's statements when he says that he signed before the entries were written out. Instead of following that straight forward course, the Commission's counsel has criticised the procedure followed in asking questions to Shaikh Chand in regard to the entries in Ex. 540. I am constrained to remark that the conduct of Shaikh Chand is irresponsible, and the effect of the argument of the Commission's Counsel is to condone irresponsibility.

According to Chand, the journey took the following course :—

“ We started from Vishrambag. We went to Sambhaji Chowk. Then to Navi Peth. Then again to Sambhaji Chowk. From Sambhaji Chowk to Narayan Peth. Then Sitaphalbag, Narayan Chowk and Kesari Wada. Then again to Narayan Peth Chowkey. Then we went to Shanwar Chowkey via Nene Ghat, Apte Ghat, Amriteshwar and Gharpure Hosiptal. From Gharpure Hospital, we went to Powle Chowk and then to Kumbhar Chowkey, and again came back to Powle Chowk. From Powle Chowk, we went to Sat Toti and from there to Maruti Chowk via Kadgipura. Then to Bhangi Colony and Siddheshwar Chowk. From Siddheshwar Chowk to Bhimpura. From Bhimpura, we went to Mangalwar Zopadi, and from Mangalwar Gadital to R. T. O. Office, from R. T. O. Office, we returned to Gadital. From Gadital Chowk, we went to Nyayamurti Ranade Road via Lokhandi Pul (old railway bridge). Tehn we went to *Topkhana, that is Ashanagar*. From Ashanagar, we came to the Corporation Building. Then we went to Shivajinagar gaathan and from there to the Shivaji Statue. From Shivaji Statue, we went to Jangli Maharaj Chowk. From Jangli Maharaj Chowk to the statue of Rani Laxmibai. From there, we went via the Congress House and came back near the statue of Rani Laxmibai. We then went to Pulachi Wadi via Jangli Maharaj Road. From there we went to Paud Chowk, then we went to M. E. S. College via Karve Road. We returned to Sambhaji Chowk via Karve Road. I have given the complete description of my itinerary from memory. I have made no note of it anywhere.”

It is the case put forward on behalf of Kekre and Chand that immediately after completing the itinerary, Shaikh Chand went to the house of Kekre which is in Sonwar Peth and submitted his report Ex. 427-B below the Jahir Suchana. Now according to the programme of itinerary alleged to have been followed by Chand, it is clear that the last place visited by him is Sambhaji Chowk where he went via Karve Road from the M. E. S. College. Chand has admitted that the journey from Karve Road to Somwar Peth has not been mentioned in the log book. If after completing the announcements Chand immediately went to the residence of Kekre in Somwar Peth, that would evidently be in the course of the same journey, and ordinarily that place should have been mentioned in the log book. There is no reference to that place in the log book at all, and the last three places mentioned in the log book (Ex. 540) are : From Pulachiwadi to Vishram Bag and from Vishram Bag to M. T. It is quite possible that the van went to Vishram Bag, which is the office of the traffic police and from where the journey started. From Vishram Bag the vehicle would ordinarily go to M. T. Had Chand gone to Somwar Peth at all, that would be before he went to Vishram Bag or, in any case, before he went to M. T. In that case again, the journey to Somwar Peth would necessarily have been mentioned. This by itself clearly establishes that on that night Chand did not go to Kekre at Somwar Peth for giving his report of the work done by him in the course of that night.

The matter does not rest there. Let us now follow the course as having been followed by the van BML 4771, as mentioned in the log book Ex. 540. That course is as follows :—

“ From M. T. To Vishram Bag Wada.  
 From Vishram Bag Wada to Sambhaji Chowkey.  
 From Sambhaji Chowkey to Narayan Peth.  
 From Narayan Peth to Omkareshwar.  
 From Omkareshwar to Shanwar Peth.  
 From Shanwar Peth to Mangalwar Peth.

From Mangalwar Peth to Tofkhana.  
 From Tofkhana to Pulachiwadi.  
 From Pulachiwadi again to Tofkhana.  
 From Tofkhana to Mangalwar Peth.  
 From Mangalwar Peth to Kumbharves.  
 From Kumbharves to Kagadipura.  
 From Kagadipura to Narayan Peth.  
 From Narayan Peth to Pulachiwadi.  
 From Pulachiwadi to Vishrambag.  
 From Vishrambag to M. T.”.

Before commenting upon the course through which the journey is alleged to have gone on, it is necessary to remember, that it is one thing to say, that the van went through certain localities and quite another, that the van gave warnings in certain localities. It may be that certain localities could be approached only by passing through other locality or road. The mere mention of the course of the journey is no indication of the fact that warnings were given in each and every one of these localities. For instance, if one wants to go to Omkareshwar, which is a part of Shanwar Peth, one has to go through Narayan Peth if one is following the course from the destination of Sambhaji Chowkey. It is necessary to remember that Sitaphal Bag is one of the six low-lying areas and it is part of Narayan Peth. It is quite possible that the van went to Sitaphal Bag in Narayan Peth, and all that is stated here is that the van went to Narayan Peth. The mere mention of Narayan Peth is no ground for holding that alert was given through the whole of the Narayan Peth. From Omkareshwar which is a part of Shanwar Peth, the van is supposed to have gone to Shanwar Peth and from Shanwar Peth it is supposed to have gone to Mangalwar Peth. Gadital is a part of Mangalwar Peth. The mere mention that the van went through Mangalwar is no indication that warnings were given in any area except Gadital. From Mangalwar Peth the van is supposed to have travelled to Tofkhana which is near the Court and part of Shivajinagar. From Tofkhana it went to Pulachiwadi and from Pulachiwadi again it went to Tofkhana and from Tofkhana again to Mangalwar Peth. From Mangalwar Peth it went to Kumbharves and from Kumbharves to Kagadipura ; both Kumbharves and Kagadipura form part of Kasba Peth, and from Kagadipura to Narayan Peth and from Narayan Peth to Pulachiwadi. It is clear that no mention is made even here of Karve Road which was the last place from where the van is supposed to have gone to Somwar Peth, in which the house of Kekre is situated.

It is also clear that the course of the journey spoken of by Chand in his deposition is not the same as the course mentioned in Ex. 540. Several additional areas have been mentioned by Chand as having been visited in the course of the itinerary. For instance, no mention is made of the following localities in Ex. 540 :—

“ Nene Ghat, Apte Ghat, Amriteshwar, Gharpure Hospital, Powle Chowk, Sat Toti, Bhangi Colony, Siddheshwar Chowk, Mangalwar Zopadi, R. T. O. Office, Nyayamurti Ranade Road, Shivajinagar Gaathan, the place of Shivaji statue, Jangali Maharaj Chowk and the corner of Rani Laxmibai's statue, Congress House, Paud Chowk, M. E. S. College and Karve Road.”

But these localities are prominently mentioned by Chand in his deposition in describing the course of the journey. The areas mentioned by Chand in his deposition are in conformity with the areas which were actually affected by the floods of 1961, and the obvious attempt is to show that all these areas which were actually affected by the floods of 1961 were in the contemplation of the

civil authorities. If all these areas were in the contemplation of the civil authorities, it is impossible to imagine that the control room would be located in the Corporation Building. I will refer to this aspect of the matter a little later.

The mileage that has been mentioned in Column No. 6 of Ex. 540 of this journey is 19. It was suggested by Mr. Phadke that the route mentioned by Chand in his deposition would be more than about 37 miles. This suggestion has been sought to be ridiculed by the Commission's Counsel and it is argued that no attempt is made to show that the mileage covered was more than 19 miles. Once we remember that the route spoken of by Chand is different and is more extensive than that mentioned in Ex. 540, it follows that the mileage mentioned in Ex. 540 cannot hold water. It is not necessary to decide this point with reference to the small discrepancies here and there. Of course, at one stage, the Commission did suspect that figures were altered. This suspicion was based upon the visible appearance of the figures themselves. It was, therefore, the duty of the Commission to pursue this matter to see whether there was any deliberate alteration. It is surprising that the Commission's Counsel has blamed the Commission even for this purpose. It may be that there is good explanation for the alteration. But the Commission must be satisfied that there is such an explanation. After the explanation was offered it did appear to me that the alteration was due to a wrong calculation and nothing turns on that.

The most important point in appreciating the value of the log book at Ex. 540 is the purpose for which the journey was undertaken. Column No. 7 is meant for making an entry in regard to the purpose of the journey. Before turning my attention to the entries made in Column No. 7, it is necessary to refer to Rule No. 463(3) of the Police Manual. The entries in the vehicle log book part-B must state the specific piece of duty for which the vehicle was used, e.g., "conveyance of police party of 25 men proceeding to thana" and should not be worded vaguely, e.g., "for Government or official duty, etc.", the object of the log book being to provide a means for checking whether the police vehicle is being used economically and for proper purpose. The first part of the entry runs thus (rendered in English):

"In the matter of giving warnings of danger for water."

Some space is left. Then the second part of the entry runs thus :

"In the matter of doing Bandobast as water has been released from the Panshet Dam."

These two parts appear clearly in two different hand-writings. No question could be asked to Chand on this point because Chand had washed his hands off this matter by saying that when he put his signature nothing was written and all the columns were blank. After the word 'Panshet' in the second part of the entry again some space has been left. It is difficult to understand why two purposes were mentioned by two persons at Column No. 7. Apparently these two parts must have been written at different times. Apart from these strange features of this document, on which perhaps light could have been thrown, had the so called writer Kamble been examined, it is significant that Column No.7 does not speak of warnings having been given in regard to the danger to the Panshet Dam. The first part speaks of danger signal in regard to water, meaning in regard to floods. The second part speaks of Bandobast, and Bandobast in respect of water having been released through the Panshet Dam. S. Y. Kamble, the supposed writer of at least one of these two parts, if not of both, is supposed to have heard making the announcement 200 times, and these announcements were made from a loud speaker mounted in the van of which he was the driver. Would it not be reasonable to say that he would understand at least the purport of the warning which was repeated



adnauseum and, therefore, must have been dinned into his ears? Would he not, therefore, mention the simple fact that warnings were announced in regard to the likely or the possible danger to the Panshet Dam? The word 'Bandobast' covers a very large field. Bandobast does not obviously mean warnings. It is necessary to remember that in the first part the word 'warning' has been mentioned. It is, therefore, clear that the writer was aware of the distinction between warning and Bandobast. The entry at Column No. 7 throws suspicion upon the case of the civil authorities, viz., that warning was announced as per the text at Ex. 427 if at all a warning was announced on that night. Furthermore, it is not clear as to during what period warnings about danger of floods were given and during what period Bandobast was done, nor do we know what is meant by Bandobast. Questions were asked to Chand in that regard obviously because he was the attestor of that document and in his capacity as user of the vehicle, he was bound by the contents thereof. Chand admitted:

"The writing in Column No. 7 is of two types and the hand-writing of the first writing is different from the hand-writing of the second. I see the original and say that after writing the word 'Panshet', a line below it is left blank. Column 7 is meant for noting down the purpose of the journey. The first entry in Column No. 7 reads thus: "to give warning about danger regarding water". This entry does not refer to Panshet. The first entry suggests that the danger was in regard to the increasing water. The second entry reads thus: "Water in the Panshet dam has been released the work of Bandobast." I agree that these words mean that water in the Panshet dam was released by the authorities concerned.

*Q.*—Your attention is particularly drawn to the word, 'Bandobast', which signifies that the duty done in the course of the journey done by the vehicle was to keep order. Do you agree?

*A.*—I agree that by Bandobast is meant to keep order, to relieve people from distress and evacuate, wherever necessary. It has been written in the log book that the work done by the vehicle was that of Bandobast, but I maintain that the vehicle also performed the duties of giving warnings. There is no mention in Column No. 7 that there was any danger to the dam. I also agree that what is suggested by the words: "Water having been released" is that the lake was full and that the water was allowed to flow through the channel. I cannot say in whose hand-writing the words, "the water of the Panshet, etc." are written, nor can I say in whose hand-writing the rest of the writing on the same page has been made."

It is suggested by the Commission's Counsel and the Advocate on behalf of the Civil authorities that the writer should have been examined and his evidence might, perhaps, have thrown some light upon the meaning of the words used. The words used are plain and one does not examine witnesses for the purpose of understanding the meaning of words used in a document. In any case, I cannot understand why the Commission's Counsel, or the Advocate on behalf of the civil authorities, did not suggest to the Commission that it was desirable to examine S. Y. Kamble, the writer of Ex. 540. These arguments completely ignore the provision in Rule 463(3) that the entry about the purpose should not be vaguely worded, as the object is to provide a means of checking whether the vehicle has been used for proper purpose. Further no explanation is attempted as to why the superior gazetted officer did not attest the document as per Rule 463 (2).

There is another circumstance which again casts doubt as to whether any vehicle, much less a single vehicle, was used for the purpose of warnings. We are now told that only one jeep was used for the purpose of giving warnings and that was BML 4771. I have already pointed out that nowhere the log

book mentions that this vehicle was used for the purpose of giving warnings in regard to the danger to the Panshet Dam. The report submitted by Chand, to which I will be coming presently, and which is supposed to have been given immediately after the work of announcement of warnings was over, speaks of warnings having been given by loud speaker mounted on traffic jeeps. The use of the word plural is very significant. It is impossible to imagine that the person who had done the work of announcing warnings is one jeep and who is making a report to his superior immediately after the work was over would use plural instead of a singular. The word used in Marathi is "जीप्" which clearly shows the intention of the writer. The Marathi word "जीप्" may stand for singular as also for plural, and whether singular is intended, will have to be decided in the context. In view of the fact that the English plural word 'Jeeps' has been used in Marathi, the object of the writer becomes clear, viz., that he wanted to refer to more than one jeep. No satisfactory explanation has been offered as to how plural word came to be used instead of the singular.

I will now come to the last act in this drama. According to Chand as also Kekre, the former submitted the report to him sometime after 1-10 and very probably at about 1-30 a.m. The first thing, which strikes one is that, no time is mentioned of the receipt of this report, nor has Kekre put his initials in token of having received this report. The date mentioned below the report is 12th July 1961 and it is quite possible that this report may have been submitted at any time on the 12th and after the collapse of the dam. The story told as to where the report was written and how it was submitted to Kekre is extremely interesting. It would, therefore, be worthwhile to cite the relevant passages from the depositions of both these witnesses which will speak for themselves. Shaikh Chand in his deposition stated :

"I submitted the compliance report (Ex. 427B) at about 1-30 a.m. (12th). Mr. Kekre had asked for a written report with instructions that I should submit it immediately after the work was over. I went to the bungalow of Kekre to hand over the report to him. I roused him from the sleep and handed over the report. After I knocked at Kekre's door, he came out within a minute and a half. I took the jeep in the compound of Kekre and wrote out the report by sitting in the jeep only. The first thing after entering Kekre's compound that I did was to knock at the door of Kekre. Thereafter, I went inside the jeep and then wrote out the report, and by the time I went near the door with the report, I saw Kekre standing there. The writing of this report might have occupied about fifteen minutes".

Then, there is an important note which runs thus :

"The witness went on changing the explanation of the time taken for writing the report and the estimated time varying from five minutes to fifteen minutes and finally he stopped at fifteen."

The witness then proceeds to say :

"I again say that immediately after I knocked at the door, Kekre came out and asked me to write out the report. I, therefore, went inside the jeep and wrote out the report. After telling me to write the report, Kekre went back and sat in the chair in the hall. After Kekre came out on hearing my knocking, I told him orally that I had moved round the areas mentioned by him and given warnings. I also mentioned all the areas I visited. Kekre then asked me to submit a report to him. He did not ask me why I had not brought a written report. Kekre did not ask me to sit down in the same room or verandah and write out the report in his presence. There is a verandah to Kekre's house. There are chairs kept in the verandah for people to sit on. There is, however, no table nor even a small desk. Kekre

lives in a Government building in Somwar Peth. The last locality I visited for giving warning was Karve Road..... The distance between Karve Road and Somwar Peth is about  $2\frac{1}{2}$  to 3 miles."

I cannot understand where was the urgency in submitting the report that very night. The urgency was to announce the warnings and not to submit a compliance report. Is it possible that an ordinary head constable would have the courage of knocking at the door of the Home Inspector arousing him from his sleep, making him wait for fifteen or twenty minutes and then submit his report to him? It is surprising that Chand should mention orally all the areas to Kekre while he was giving account to him of what he did. It is still more surprising that instead of sitting in the verandah, Chand should sit in a jeep for writing out the report. It is noteworthy that Kekre was sitting in the Council Hall while the evidence of Chand was going on in this respect. The story that, when there was a verandah, when there were chairs in the verandah Chand should be asked to go to the jeep to write out the report is, on the face of it, very strange. In the first place, there would be no light with the help of which Chand could write this report by sitting in his jeep. Kekre, who gave evidence after the evidence of Chand, tried to supply the lacuna. He admitted that he was sitting in the Council Hall while Chand's evidence was being recorded. Kekre's evidence on this point is also of considerable interest :

"No time limit was fixed by me for Chand to complete the work. He was free to take as much time as he would like. At about 1-30 a.m., Chand came to my bungalow. He wrote the compliance report in my bungalow, that is, by sitting in a jeep in front of my bungalow. During this time, I was sitting in the verandah by the side of my mother's cot. My mother is 65 and she was sleeping in the verandah. The verandah faces the west. The width of the verandah is six feet. The cot was kept just in the middle. I again say that I am not sure that the verandah faces west."

Then, there is a note regarding the demeanour of the witness which runs thus :

"After considerable time, the witness says that the verandah faces north-east."

He then proceeded to say :

"I am still puzzled about the direction and I cannot say north-east, as I stated. Chand required  $7/8$  minutes to write out the report. I required that the compliance report should be made immediately after the completion of the work.

- Q. If that is so, why did you not ask Chand to put down the time below the compliance report, or why did you not yourself make sure that you received the report at a particular time?
- A. Time was important, but it was not the practice to mention time of the compliance report. Normally, in my office, time is not recorded. Sometimes, it may be put. I had the compliance report when it was placed in my hands. I ascertained whether he had gone to all the places which I had mentioned to him. I realised that he had not mentioned all the places in the compliance report. I did not, however, point out this mistake to him."

Kekre has resorted to the familiar device of saying that a particular practice prevails in his office, knowing that there is no means of testing the correctness of his statement. In answer to further questions by Mr. Phadke, Kekre stated :

"Chand wrote the compliance report while sitting in the jeep in the light that flashed in jeep through my front door. I also say that there was light in the verandah which could also reach the jeep. Chand was sitting in the

front by the side of driver. The power of the bulb near the door was about 40 candles. The width of the verandah is about 6 ft. and jeep was standing about 4 ft. from the verandah. The height of the jeep was about 6 ft. The seat is 3 ft. from the ground. The jeep was standing just in front of my door. Both the parts of the door were opened. I had an objection to Chand coming and sitting in the verandah because my mother was ill. I, however, did not express that objection to Chand. According to me, there was no difficulty in writing down the report by sitting down in the jeep in the light coming through my house. Chand did not complain that there was insufficient light. Had my mother not been in the verandah in the ordinary course, I could have asked Chand to sit down in the verandah and write out the report by sitting down there."

Exhibit 427 does not bear any endorsement or date about the receipt of the report in the office. On the face of it, the report does not show at what time it was received and by whom it was received. In answer to further questions by the Commission, Kekre stated :

"The verandah of my house faces east. It is open on the north as also the south, that is to say, there are dwarf walls of three ft. and on that wooden trellis work is constructed. The length of the verandah is about 45 ft. There were tin partitions near the door of the hall opening on the verandah. No part of the verandah receives any rains. Winds do come upto the place where my mother used to sleep. My mother defies the winds saying that she would not sleep inside."

There is a saying in Marathi that if one wants to conceal one untruth one has to take recourse to several untruths. The whole story of the compliance report having been submitted that very night is highly improbable. There is no mention in the log book itself of Chand having gone to Somwar Peth at all on that night, nor is there mention of the fact that Chand had gone to Karve Road and from Karve Road he went to Somwar Peth via Deccan Gymkhana Chowk. The time of the receipt of the report is not mentioned in the document itself. At any rate, on that night, nobody knew that the dam would collapse next morning and, therefore, it was necessary to submit the report that very night. No harm would have been done in case the report had been submitted on the next day, and that appears to me to be the ordinary common course. It is unlikely that Chand would go to his superior officer and rouse him from his sleep and tell him that he would write a report and submit it to him. That would mean that the officer would have been required to make himself awake till the report was submitted. Chand had not gone there with a written report in his hand. It is most unlikely that Kekre would take objection to Chand sitting in the verandah for the purpose of writing the report merely because his old mother was sleeping in the verandah. As Kekre himself has stated, the verandah is 45' long and 6' wide. Kekre could have asked Chand to sit at some distance from his mother. Again Kekre does not say that his mother had objection to Chand sitting there. The suggestion probably is that Chand being a Muslim and Kekre being a Hindu and his old mother being orthodox, Kekre felt objection for Chand going down to the verandah. It is difficult to imagine that such an objection would be raised in the year 1962. The whole story appears to be a cock-and-bull story. It is difficult to understand why his old mother should sleep in the verandah defying rains and inclement weather. There is inherent difficulty for any one attempting to write the report in the jeep. We are told that the light from the front and the verandah reached the seat where Chand was sitting for writing the report through the verandah and through the door of the hall. Is it possible that this light which would definitely be dim would enable anybody to write anything like the report, Ex. 427-B, which is in clear hand and which

does not show as having been written in dim light ? I feel no hesitation in disbelieving both Kekre and Chand when they say that the compliance report was submitted on the night between the 11th and 12th at 1-30 a.m. I am inclined to the view that the report must have been prepared some time later, in any case, after the disaster. Chand had admitted that the normal practice is that the Home Inspector would issue his order on a separate piece of paper and on that order he would write the report. According to him, the warning to be announced will be on a separate paper and the order of the Home Inspector will also be on a separate paper and the compliance report will be on the paper on which the order is contained. The object of writing the report on the same document as Ex. 427 is to make it appear that the contents of the document must be read in the context of the order of the Home Inspector and in the context of Chand's report. It may be that the text of the Jahir Suchana was prepared on that night. I am not quite sure whether Kekre's endorsement was also made on the same day. In any case, the report appears to have been submitted at a later stage so as to include more areas, such as Deccan Gymkhana Chowk, Tofkhana and part of Shivajinagar near the Court-house, than those included in the text. It is impossible to believe that such obvious contradictions would appear in the text of the Jahir Suchana and the endorsement below the same and the compliance report below the endorsement, had these documents been genuine. In view of the evidence discussed above, I feel no hesitation in holding that, in all probability, the endorsement made by Kekre and at least in all certainty the report of Chand have been brought into existence after the dam collapsed.

The Commission's counsel has argued with an air of cock-sureness that it is more important to see to which areas the warnings were actually given than to look to the decisions taken in regard to the areas to which warnings were to be extended. This involves the assumption that the evidence in regard to the areas in which the warning was given is foolproof. As I have laboured to point out above, the evidence in that connection, both documentary and oral, is not only discrepant but is highly suspicious. The fallacy underlying this argument is to go from the conclusion to the premises by raising an inference that if warnings are given in more localities, then decision to give warnings in all these localities must have been taken. The fallacy underlying this argument is so palpable that it does not require any elaboration for exposing the same. The evidence in regard to what decision was taken about the areas is in the shape of a contemporaneous document (Ex. 427A). Ordinarily, it would indicate that warnings would be given to the areas mentioned therein. We must start with this premise and starting with this premise, we must view the evidence, in which an attempt is made to extend the areas, with caution. I have examined the entire evidence threadbare and I feel no hesitation in holding that warnings were not given to any more areas besides the areas mentioned in the text of Ex. 427. I will show by referring to the evidence of the citizens that the warnings that were given were of a vague character and at no time mention was made about any danger to the dam. The warnings were of a usual character viz., that water would increase or that floods would come.

Before going to that part of the evidence, I may point out a very serious difficulty in the way of accepting the evidence of Kekre and Chand. Although they have stated in a general way that Chand was instructed to read the text of Exhibit 427A, it is their case that he (Chand) was not asked to read the introductory part mentioning the areas. Kekre, in his deposition, stated :

"I asked Chand to read the text beginning from the words :

'या सर्व लोकांस कळविण्यांत येते की'

This was an important portion.  
The earlier portion was unimportant."

Chand, in his deposition, says :—

"I read out all the portion of Ex. 427 except the following :—

'*Jahir Suchana*.....Inhabitants of the following localities,  
i.e. Mangalwar Peth, Bhimpura, Pulachiwadi, Ashanagar, Sitaphalbag  
and Amruteshwar'

The case, viz., that the introductory portion relating to the localities was not read out by Chand, has been made out for getting out of the difficulty that these localities are no other than the six traditional lowlying localities. It has, however, been forgotten that in putting up such a case, they would be landing themselves in an absurd position. We are told that Chand started reading from the words : "या सर्वे लोकास कळविणेत येते कीं", i. e., "all these persons are being informed" without mentioning the localities. Let us suppose that Chand first read out the text by standing at some spot on the Jangli Maharaj Road.—What would he say? He would either say, that all the localities including the Jangli Maharaj Road locality are warned, or he would say : "You people residing in these localities are warned". Without the mention of the localities, the subsequent warning would carry no meaning to the inhabitants where the announcement is supposed to have been made. The locality in which the announcement is made has no meaning unless the people of that locality have been warned about the floods arising out of the danger to the dam, visiting their localities. In this connection, it is necessary to refer to a very important admission made by Chand almost at the beginning of his cross-examination by the Commission's counsel.

Chand says :

"He (Kekre), therefore, told me that it was necessary to give warnings to the people living on the banks of the river."

If that is so, the warnings were evidently meant for the people living on the banks of the river. Whatever the place where the warnings were announced, the warnings were really meant for people living on the banks of the river. A mere reading of the text of Ex. 427 without mention of the localities or without, at any rate, using the expression "The people living on the banks of the river are warned", is absolutely meaningless and would not convey anything to the people in whose localities the warnings were announced. Supposing the announcer goes to the Camp area and makes the announcement saying that there is danger to people living on the banks of the river, then this announcement would be simply ignored by the people of the Camp locality. It is thus evident that the case put forward on behalf of the civil authorities is riddled with contradictions. There cannot be any warning without the mention of the localities which were likely to be affected by the floods. The warning must state that certain particular localities were likely to be affected and that the warning was meant for the people who were likely to be affected by the floods. The evidence of Shaikh Chand and Kekre clearly exposes the falsity of the case that has been put forward on behalf of the civil authorities.

I have already referred to Chand's statement, wherein he says that Kekre instructed him that it was necessary to give warnings to the people on the banks of the river. This clearly shows that the areas contemplated as the areas likely to be affected by the floods were on the banks of the river. These statements find corroboration from the reports of three police officers, Bongale, Police Sub-Inspector, Vishrambagwada, Shilavant, head constable of Deccan

Gymkhana Police Station and Pardeshi constable of Deccan Gymkhana Police Station, who say that they were instructed to give warnings to the areas on the banks of the river.

This is corroborated by the statements of the citizens as detailed below :—

Vora (Ex. 927)	..	People residing on the river-side should be cautious.
G. B. Shinde (Ex. 943)	..	Rise in water in areas on banks of river.
M. V. Shinde (Ex. 945)	..	People on the banks of river should be cautious.
Mrs. Jog (Ex. 977)	..	People on the banks of river should be cautious.
Godbole (Ex. 978)	..	People on the banks of the river should be cautious.
Savant (Ex. 1027)	..	Rise in water on the river banks.
Amte (Ex. 1039)	..	People on the banks of the river should be cautious.
Jangi (Ex. 1052)	..	People on the banks of the river should be cautious.
Dhole (Ex. 1059)	..	Police told that they were taking steps on river banks.
Chaudhari (Ex. 1072)	..	Police were moving whole night on banks of the river.
Mule (Ex. 1088)	..	Police were warning people on the river banks.
Gosavi (Ex. 1109)	..	Danger to people living on banks of the river.
Salaskar (Ex. 1135)	..	People on river banks should take care.
Jadhavrao (Ex. 1153)	..	People on river banks should leave.
Dr. Mrs. Gune (Ex. 887)	..	People living on banks of water should be on guard.
Gadekar (Ex. 902)	..	People on river side should be vigilant.
Shirole (Ex. 910)	..	Danger to persons living in lowlying areas on the banks of the river.

This evidence clearly shows that the announcement was that there was danger to the people on the banks of the river. Even if such announcement is made in localities other than the six traditional lowlying areas, the people in these additional localities would feel that there was danger only to those who live on river banks and not to them. Assuming therefore, that Chand moved in all the areas, where he says that he had moved, the warning given by him was of no avail to those who were not living on the banks of the river or who did not feel that they were living on the banks of the river. In this context it is pertinent to remember that according to Darp (Ex. 621) so far as the city of Poona was concerned, certain areas only were described as lowlying areas in the context of floods and that the expression 'lowlying areas', so far as Poona City was concerned, had acquired that usage and significance, because of the visitation of floods.

(b) *By Municipal staff.*—I have already pointed out that the members of the municipal staff moved round the six lowlying areas for the purpose of giving warnings. They did not follow the text that was prescribed by Heble. Darp has admitted that he only asked the members of the municipal staff to warn the people that floods were coming and that they should get ready for evacuation. This is what Darp says :

"I had not supplied any text of the warning that the four members of my staff were to give in the six localities. I had not asked these officers to tell

people in the course of their warnings that Panshet dam was in danger. I only asked them to warn the people that floods were coming and that they should get ready for evacuation."

Darp then speaks of the normal practice that is followed in giving these warnings :—

"The normal practice followed is that our men go to each of these localities, contact two or three leading men from each locality and tell them about the floods."

The statements made by Kadam, Rane and Savant (Exs. 626, 630 and 627) show that they gave warnings about rise in water or the oncoming of floods.

(c) *Police Reports.*—It also appears from the reports of some of the police officers that they too gave warnings moving on foot, under instructions from the police officers assembled in the control room. It is interesting to see the nature of the warnings given by these people. Y. V. Chavan (Ex. 1241) says that he moved in the localities of Mangalwar, Somwar, Bhimpura and Gadital announcing that there would be rise in water on the banks of the river. Salunke, Panasare, Pathan, Kharade, Chaudhari, Hirgude, Tambe, Temgire and Shaikh constables under the Vishrambag Police Station (Ex. 1242) have spoken about warnings having been given regarding the rise of water. Similarly, Zagade, Patil, Kamble, Shilvat, Naver, Salunke, Sant, Pardeshi, Thakor and Ghorpade of the Deccan Gymkhana Police Station have also spoken about rise of water in the river (Ex. 1243). It appears that these constables were instructed to warn people on the banks of the river.

Exs. 1241 to 1248 are the reports submitted by the police officers and constables of the various Police Stations in Poona viz., Faraskhana Police Station, Vishrambag Police Station, Deccan Gymkhana Police Station, Kirkee Police Station, Bund Garden Police Station, Military Lines Police Station, Khadak Police Station and L. C. I. B. These documents have been exhibited without examining the persons who had submitted these reports and on the suggestion of the lawyers on behalf of the civil authorities. Ex. 1249 contains reports of the work done by the police and police officers in the V. H. F. control room, wireless mobile etc. Ex. 1250 is the report of R. R. Ghorpade, Reserve Police Inspector, Headquarters, Poona. Ex. 1251 is the report of the Police Inspector, Pikle along with its accompaniments. Ex. 1252 is the report of P. S. I., S. S. Naik, Traffic, Poona City. Ex. 1253 contains extracts of entries in the Telephone Registers of all Police Stations. All that need be pointed out here is that barring a few reports, most of these reports speak about the rise of water in the river or increase of floods. It will, therefore, be interesting to refer to the few reports which speak about the danger to the dam. S. S. Dive of the Faraskhana Police Station says that he was informed to remain as Reserve Police in the Police Chowkey on 11th July 1961 because of the possibility of Panshet dam breaching. He attended to his duty in the Chowkey and remained as a reserve till 4 p.m. and thereafter, at 8 p.m. went to the Faraskhana Police Station and at 9 p.m. he went to the Corporation Building. This indicates that he was informed of the possibility of the breaching of the dam before 4 p.m. R. B. Gharal of the Deccan Gymkhana Police Station says that he learnt in the Corporation Building that the dam on the Mutha river was likely to breach and, therefore, he remained as a reserve in the Corporation Building. To the same effect, are the reports of Laxman Mahadeo Bhole; B. T. Pawar and D. S. Savale of the Deccan Gymkhana Police Station. Similar are the statements of Nathuram Bhaurao Ghogare, S. D. Gaikwad and Anand Ramchandra Patil. The report of Mahadev Bapuji Vanashiv of the Deccan Gymkhana Police Station says



that he received a phone from the Thana Ammaldar of the Deccan Gymkhana Police Station that, there was danger to the Panshet dam and was asked to go to the Corporation Building. Accordingly, he went to the Corporation Building and instructed people living on the banks of the river that the dam was likely to breach and there would be heavy floods. Madhukar Dagadu Chavan, constable of the Deccan Gymkhana Police Station says that, at about 6-30 p.m. on 11th July 1961 he learnt in the police station that there was danger to the Panshet dam due to rain and the same was likely to breach. He was, therefore, instructed to go to the Corporation Building and remain there as a reserve. To similar effect are the reports of B. K. Savale and S. A. Jagadale of the Deccan Gymkhana Police Station and those of B. G. Bhise, R. D. Kulkarni and D. K. Patil. S. S. Bhonde says that he learnt at 3-30 p.m. on the 11th that the Panshet dam was likely to breach. Bhalchand Dinkar Buchke of the Deccan Gymkhana Police Station says that he learnt on the 11th about the likelihood of the breach of the dam and that he was asked to remain as a reserve police. In view of the numerous discrepancies in these reports, it is not possible to place any reliance on them.

(d) *The estimate of the officers about floods.*—Finally, it is somewhat interesting to see what was the estimate of the civil authorities themselves regarding the rise of water. Of course, there are two conflicting trends in their estimates which are mutually destructive. According to one trend, they decided to give warnings to larger areas than the traditional lowlying areas. According to the other, they have suggested that the engineers told the Collector and the Divisional Commissioner that the floods would be somewhat bigger or little bigger than the floods of 1958. Kekre in his deposition states that, at the meeting the Divisional Commissioner said that if the breach in the Panshet dam were to be confined to a narrow space, the floods would be a little bigger than the floods of 1958. I have already referred to the evidence of Darp in this connection. S. B. Kulkarni, who heard the account of the Divisional Commissioner's meeting from Darp, has stated :

“ I understood Darp to mean that the floods would be somewhat bigger than the floods of 1958 ”.

S. B. Kulkarni, at a later stage, has admitted :

“ Till Bhalerao's message at about 10-00 a.m. it did not occur to me or the Collector that warnings about the coming of floods should be given to wider areas. ”

It is significant to note that the control room was set up in the Municipal Corporation Building, which lies at a distance of about one furlong from the bank of the river. The control room continued to function till 12 noon in the Corporation Building and it is only after the waters came on the ground floor of the Municipal Corporation Building that the authorities tried to shift the headquarters of the control room in hurry. S. B. Kulkarni states :

“ It never struck me that the water would enter the Corporation Building till the water actually rushed in it. During the 1958 floods, the water had come on the road behind the Corporation Building. The level of the compound of the Corporation Building is about 3 feet higher than the road. I am talking of the back compound when I say that it was three feet higher. The land of the compound is sloping. The ground floor level of the building is about 6 to 7 feet higher than the level of the road. If the water rose by 6 or 7 feet over and above the level reached in the floods of 1958, it would enter the ground floor of the building. So much rise in the level of the water was not anticipated, notwithstanding that the Panshet dam had breached. It did not occur to our minds that there would be such a rise of water. ”

Earlier Kulkarni has stated that the exact magnitude of the flood was never realized even at 11-00 a.m. when they crossed the Lakdi bridge. Prabhakar in his deposition stated :

“ We did not anticipate that flood water would enter the Corporation building when we decided to locate the control room in that building on the evening of the 11th. If we had anticipated that the flood water would enter the Corporation Building, we would have perhaps selected some other place for that purpose.....Even after the breach of the Panshet Dam, we did not anticipate that the flood water would enter the Corporation Building. We were taken by surprise when we saw the water actually entering the Corporation building. ”

(The quotation is not continuous).

Prabhakar has also stated :

“ Till 9-00 a.m. I did not anticipate that flood water would enter these godowns. ”

Similarly, Kekre has admitted :

“ I did not ask Chand to inform the people living in Juna Topkhana that in case the dam burst, their area would be submerged in water. According to me, the areas round about Shanwarwada and Kasba Chowkey are lowlying areas. I did not anticipate that these areas would be affected by floods. Even after I came to know that the Panshet dam had breached, there was no anticipation till water actually entered those areas. ”

In the face of these admissions, it is idle to pretend that warnings were given to any areas, such as Karve Road, Prabhat Road, Jangli Maharaj Road, Somwar Peth, Deccan Gymkhana etc.

(e) *Citizens*.—I now propose to analyse the evidence of the citizens. Even the evidence of the citizens, who say that warnings were given, suggests that in most places the warnings that were given related only to the apprehension of greater floods and no mention was made of danger to the dam. Very often, people living in the same localities have heard the warnings differently ; some people saying that it was announced that there was danger to the dam and others saying that it was announced that there was danger of flood or there was danger of increase of water. Some have spoken of no warning being given and some have stated that no warnings were given at all. In this connection, I will first of all refer to the statements of those citizens who were not examined, but whose statements are at Exs. 925 to 1170. I will analyse these statements according to the localities.

So far as Kasba Peth is concerned, the statements of 46 citizens have been brought on record. Twelve out of these citizens say that no warnings were given. Twenty-seven speak of warnings having been given relating to the possible rise in water. Only five persons have stated that warnings were given that there was danger to the dam. There is one person who says that the dam had actually breached and one says nothing about warning. Out of the twelve persons who say that no warnings were given, one is pleader of twenty years' standing, eight are men in service, one is a trade union worker, one is a tailor and one has not given his status. Out of the thirty-three who speak of some warning or the other having been given, two are in service, two are social workers, one is a coolie, one is an artist and six are petty shopkeepers. The rest have not given their status.

The statements of twenty-six citizens in Narayan Peth have been brought on record. Out of them, seven say that no warning was given. Seven say that warning was given that there will be increase of water in the river. Only one speaks of danger to the dam. Eight people say that the warning was that men on the banks of the river should be cautious. Two of these are from

Sitaphalbag ; two have not said anything about the warning. It is quite possible that the seven persons who speak about warning about the rise of water may be from Sitaphalbag.

Statements of twenty-two citizens in Shanwar Peth have been brought on record. Eleven of them say that no warning was given ; four speak of warning relating to the rise of water ; two of these citizens are from the usually affected areas. Two speak of warnings having been given, but say that people on the banks of the river should be on their vigil. Three have not said anything so far as the warning of the 11th was concerned. It is, however, noteworthy that these persons speak of the warnings given on the 12th. It can, therefore, be inferred that they had not heard of any warnings given on the 11th. Out of the twelve persons, who say that no warnings were given, one is a head of educational institution, one is a journalist, one is a Government servant, one is a factory owner and six are in service. Out of the four, who speak about the warnings having relation to rise of water, one is a teacher and one is a factory owner. The rest do not speak of their status.

From the localities of the Jangli Maharaj Road and Ghole Road, the statements of thirty-one citizens have been brought on record. Thirteen of these say that no warnings were given. Four speak of warning having been given to the effect that there will be rise in water. Four persons speak about the danger to the dam. Four are from Pulachiwadi. Three persons say that people on the banks of the river were asked to be on alert. Two persons have said nothing about the warning on the 11th. Since, however, they speak of warning having been given on the 12th, it can be inferred that they had not heard any warning on the 11th. One says that the warning was that the Panshet dam had breached. Out of the thirteen persons who speak of no warning having been given, one is a postmaster, two are agents of the Banks, one is a librarian of Bhandarkar Institute, one is a big shop-owner, one is a share broker and some are shopkeepers. The status of the rest is not known. Out of the four, who speak of warnings having been given regarding the rise of water, one is a photographer, one is a carpenter and the rest are businessmen. The person who says that the warning was that the Panshet dam had breached is the proprietor of the Hindvijaya Talkies.

From the localities of Karve Road, Prabhat Road and Erandavana, statements of six persons have been brought on record. Two have stated that no warning was given. The remaining four do not say anything one way or the other. Out of these four, one speaks of warnings having been given on the 12th. It can, therefore, be inferred that he did not hear any warning on the 11th. Out of two persons who speak of no warning having been given, one is a retired Inspector-General of Prisons.

From the locality of Mangalwar Peth, statements of thirteen citizens have been brought on record. Eight of them say that no warning was given. One speaks of a warning relating to rise in water and one speaks of warning relating to the danger to the dam. Three have not said anything. One can presume from the non-mention that they heard no warning. Had they heard any warning, they would certainly have mentioned so. Out of the eight, who speak of no warning having been given, two are medical practitioners, one is a property owner and one is a Government servant. Out of the three, who do not say anything, one is an M. L. A., one is a social worker and one is a corporator. In view of their status, it is quite reasonable to infer that if any warning was given, then they would not have failed to mention the same.

From Gadital locality, the statements of five citizens have been brought on record. One speaks of warning having been given to the effect that water would rise and four do not say anything about warning having been given.

Out of the locality of Somwar Peth, statements of thirteen citizens have been brought on record. Nine say that no warning was given. One says that there was danger to the dam and three have not said anything about the warning. Out of the nine, who say of no warning having been given, one is a Government servant, one is Registrar, Small Causes Court and the rest are merchants, etc.

From the locality of Sambhaji Chowk, Laxmi Road and Alka Talkies, statements of nine citizens have been brought on record. Four of them say that no warning was given. Four do not say anything about warning having been given, and one speaks of danger to the dam.

From Budhwar Peth locality, statements of three citizens have been brought on record. One says that no warning was given. He is a pleader. Two do not speak of any warning having been given.

From the Ashanagar locality, statements of eight persons have been brought on record. One of them says that no warning was given. One speaks of warning having relation to rise in water and six speak of warnings having relation to danger to the dam.

From the locality of Shivajinagar including Bhamburda village and localities near about the Corporation Building and Mang colony, statements of nineteen citizens have been brought on record, some of whom were examined. Four of them say that no warnings were given. One speaks of warning having relation to the rise of water on the banks of the river. Three speak of warning having relation to the danger to the dam. Five say that warning was given that there would be danger to the dam, but they added that these warnings stated that people on the banks of the river should be on the alert. Five persons do not say anything about the warning. Out of the four, who speak that no warning was given, one is an advocate, one is a Government servant and one is a trade union worker. Out of the five, who say that people on the banks of the river should be on the alert as there was danger to the dam, one is an ex-Mayor, one is a hotel owner and one is a trade union worker.

In the locality of Apte Road, statements of two citizens have been brought on record. Both of them say that no warnings were given. They are both men of status.

I will now refer to the evidence given by some of the citizens before the Commission. Dr. Y. G. Bodhe (Ex. 102) is an F.R.C.S. and has his nursing home in a building known as Udyan Prabha situated on the Jangli Maharaj Road. He says that he did not hear any warnings given by the police at any time on the previous night. He adds that he learnt later from the members of his staff that warnings were given by the police on the previous night to those who were residing in the Pulachiwadi locality. The nature of the warning, as he gathered was that 'As floods were to come, the people should be careful and keep their things ready for removal if need arose'. No valid reason has been shown as to why the evidence of Dr. Bodhe should not be accepted as true, except the general comment that he is one of the 'invitee witness'. Further, his evidence finds corroboration from the evidence relating to the warnings given by the police officers and members of the municipal staff referred to above. Had Chand given warnings from the Jangli Maharaj Road, that warning would certainly have been heard by Dr. Bodhe.

Dr. Phatak has been examined at Ex. 879. He is an M. D. and stays in a bungalow on the Prabhat Road. His maternity home is situated on the Tilak Road near Alka Talkies. He says that he had heard no warnings on the night of the 11th about the possible danger to the dam. In addition to the comment that he is an 'invitee witness', it is pointed out that he had not signed the

statement and that the statement, which he is supposed to have made was the record maintained by the Senior Advocate, Mr. Bakhale. Dr. Phatak, however, has plainly admitted that the statement recorded by Mr. Bakhale is correct. Another comment made against this witness is that he has suffered a loss of Rs. 40,000 as a result of the floods, and, therefore, he is interested in saying that warnings were not given. In my view, there is no substance in this comment. It is difficult to imagine that a man of Dr. Pathak's education would be under the impression that he would be entitled to damages merely on the basis that no warnings were given by the police. He has given no notice to the Government nor filed any suit for damages so far.

Vithal Narayan Dixit (Ex. 881) is the proprietor of the International Book Service situated on the Deccan Gymkhana Chowk. His evidence has more relevance as to what took place on the 12th and will have to be discussed at the appropriate stage. For the time being, the only portion that is relevant for the present discussion is the one where he has stated :

"I never came to know that warnings were given on the previous night. I did not read in *Sakal* that civil authorities had taken any precautions. There was no mention of any precautions having been taken by the civil authorities in the news-item appearing in *Sakal* on the 12th.....I had not read the entire contents in the columns of *Sakal* dated the 12th."

Miss Sindhu Savarkar is the Superintendent of the Ahilyadevi High School and her deposition is at Ex. 885. Her evidence also has bearing as to what took place on the 12th. About what transpired on the night of the 11th, she states thus :

"I had received no warning from any authority at any time about the impending danger. I did not learn that there was any danger to the dam till 11 a.m. (12th)."

It is true that Miss Sindhu Savarkar does not live in the locality. But, Sane, Superintendent of Navin Marathi Shala, which is a sister institution, stays in that locality and he says in his statement (Ex. 937) that no warnings were given in that locality.

Dr. Madhumalati Gune has her hospital on the Jangli Maharaj Road. She stays on the top floor of the building. As to the warnings given on the night of the 11th, she says :

"At about 10-30 p.m. on the 11th, I heard a warning coming from the direction of the Hind Vijaya Talkies, saying that water was rising and that people living on the banks should be on the guard. I cannot say where the announcement was being made. I made no special enquiries about these warnings because such warnings are issued every year. Every year floods come and warnings are given on our side annually."

In answer to questions by Mr. Murudkar, she stated that she had made no application to Government for compensation nor filed any suit. In answer to questions by Mr. Phadke, on behalf of the Citizens' Committee, she stated :

"Three nurses and three ayahs are on duty during night time and they stay on the ground floor for the night."

She added that there were two or three cases of pending delivery and the relatives of the patients stayed on the ground floor for the whole of the night. None of them reported to her on the morning that warnings were given during the course of the night about the danger to the dam. She also stated that she has a Gurkha watchman on the ground floor who sits on a bench at the door or moves during night time. He too did not report about any warnings having been given.

Govind Sadashiv Pathak is a pleader of 25 years standing (Ex. 889). He was staying in the house of his daughter which is situated to the east of the New Bridge which falls in Kasba Peth. He asserts that no kind of warning was given on that night by the police or by anybody in the locality of his house.

M. N. Bhat, who is now a professor in M. E. S. College, Poona, and who was the Principal of that College during the floods of 1961, has given evidence at Ex. 892. He was staying in Gore's house, which lies at the junction of the Prabhat Road and the Karve Road. He states that he heard no warnings whatever on the night of the 11th.

Jayant Shridhar Tilak (Ex. 894) is one of the trustees of the Kesari Maratha Trust and the Chief Editor of Kesari. He stays in a building known as Gaikwad Wada, House No. 568, Narayan Peth, Poona. He says :

"At about 8 p.m. (on the 11th), I asked my reporter to ring up the Divisional Commissioner. The reporter mentioned to Mohite that there was all sorts of news prevailing in the town and the people were anxious to know the truth about the Panshet's condition. The Divisional Commissioner told the reporter that there was nothing serious nor particular and that reporter wanted some news and was, therefore, asking questions to him."

Tilak says :

"No warnings were heard by me during that night about either the possibility of heavy floods or about danger to the dam, nor did I learn from anyone that any such warnings were given."

Jayantrao Tilak is the Chairman of the Citizens' Committee and has submitted two written statements, one in his individual capacity and the other as the President of the Citizens' Committee. Merely because Tilak happens to be the Chairman of the Citizens' Committee, it would not be proper to reject his evidence.

These are the citizens, who have spoken about warning not having been heard by them during the night of the 11th. One of the points argued in respect of the evidence of these witnesses is that their evidence is of a negative character. But, all the same, it can be used as corroborative to other evidence, which seems to indicate that either no warnings were given at all or, if any warnings were given, they related to the rise of water or the occurrence of flood.

I will now discuss the evidence of some of the citizens who have spoken about warnings having been given. The most important witness on this point, according to the Commission's counsel and the advocate of the Citizens' Committee, is S. N. Gadekar (Ex. 902), who is a retired District Superintendent of Police. He has a petrol pump on the Jangli Maharaj Road and he stays in a house in Ghole colony, which is about five hundred yards from Jangli Maharaj Road. He began by saying that, occasionally, he had to visit the petrol pump during night time also for avoiding the congestion of lorry traffic on his pump. He asserts that on the night of the 11th, he was on his pump till 12 midnight as there was great rush of lorries and he returned home at about 12-30 a.m. As he was proceeding home, he heard the announcement on the Ghole Chowk, which was to the following effect :—

"Panshet Dam is in danger, therefore, *people living on the riverside should be vigilant.*"

Pausing here, for a moment, if this evidence is accepted, then it destroys the evidence of Chand and Kekre viz., that the entire text of Ex. 427, except the part relating to the localities, was read out. It is further significant that what was being announced was that people living on the riverside should

be vigilant as there was danger to the Panshet dam. This means that, if at all, the announcement was addressed to the riverside people. A number of questions were asked by the Commission's counsel as also by the Commission with a view to test Gadekar's statement as to whether it was probable that he would be at the pump on that night till 12 midnight. With regard to his having heard the announcement, on close questioning, he gave the following answers :—

"I heard it while passing. I again say that I stopped there for two minutes. I cannot say whether the announcer was reading from a document or whether he was making a verbal announcement. Till 11th midnight, I had heard nothing about the Panshet dam. I was not surprised to hear the announcement at the time when the announcer proclaimed that there was danger to the dam. I did not go near the jeep to make enquiries as to what was the matter about the Panshet dam. I did not think it necessary to go although I had worked as a District Superintendent of Police.

Q. Shall I take it that you did not feel the gravity of the news ?

A. As the news related to the people living on the banks of the river, I did not consider the news as important. The announcement was made near the statue of the Rani of Zanshi. I consider the statue of the Rani of Zanshi as being on the banks of the river. The statue of Rani is situated two furlongs from the bank of the river. I do regard a distance or a zone up to two furlongs as the bank of the river. Now I say that I consider the place where the statue is situated as the side of the river."

The position taken up by the witness, viz., that he would regard the area of two furlongs as area lying on the banks of the river, is patently absurd and requires no further comment. What comes next is still more staggering. In answer to further questions, he said :

"I say that when I heard the announcement that the Panshet dam was in danger, I felt that there was nothing unusual and that this was more or less analogous to the annual feature with the difference that there may be little more floods. I did not inform anyone of what I heard from the announcement. I did not think it necessary to publicise this news because I read from *Sakal* that the danger to the Panshet dam has been averted."

It is surprising that a man of the position of a retired District Superintendent of Police should say that the announcement that the dam was in danger was on par with the announcements made regarding the annual floods with the difference that this time the floods would be somewhat more. It is equally surprising that he should not speak about this alarming news to anyone on that night. Mr. Phadke, on behalf of the Citizens' Committee, asked questions to the witness with a view to challenge the fact that he remained at the petrol pump till 12 midnight, and the answers given by the witness are typical :

"It is only once or twice a week that I remain at the petrol pump till 12 midnight. There was one servant on that night. In all, seven or eight lorries stopped on the petrol pump between 10-30 p.m. to 12 midnight. I went to the petrol pump on that day at about 9-45 after taking meals. I went there casually and not because I was called by my servant. When I went there, two or three lorries had already come. These lorries must have left the pump at about 11-30 after taking diesel. The diesel could have been supplied by my servant. I did not stop because I wanted to supply diesel to these lorries. By about 11-30, four or five more lorries came there. The diesel oil was supplied to them at about 12 midnight. My servant certainly could have supplied diesel to them. I did not stop there for supplying them diesel."

Q. Now, can you tell the Commission as to why you remained there till 12 midnight ?

A. I stopped there for general supervision. Sometimes, the servant and the proprietors of the car are in league with one another and take more oil and prepare false accounts. I had this experience twice or thrice prior to this. That means that the servant cheated me outright. I say that this particular servant had not cheated me before. It is only after the 11th July that the servants cheated me as stated above.

Q. Since you had no experience of any dishonest behaviour on the part of this servant, can you explain why you thought it fit to remain on the petrol pump till 12 midnight ?

A. For general supervision".

The witness, in his search for inventing an excuse for remaining present till midnight, hit upon the idea of saying that the servant had cheated him and, therefore, he had to remain there. He was, however, forced to admit that his servants had cheated him only after the 11th of July and not before. He, therefore, fell back upon the excuse that he remained there for general supervision. Can anyone with ordinary commonsense, believe the evidence of such a witness merely because he happens to be a man of some status ? The Commission's counsel has argued that a retired District Superintendent of Police should not have been subjected to the kind of cross-examination to which he was subjected by the Commission as also by Mr. Phadke. He complains that this amounted to viewing his evidence with suspicion. It is every-day's practice in a court of law to subject the evidence given by a witness to the test of probabilities. If a witness, whatever his status, has the audacity to say things which are inherently improbable, his evidence is not worth the paper on which it is written. That no warning was given on Jangli Maharaj Road would also be evident from the circumstance that two important municipal officers, (1) G. M. Khopkar, Assistant Municipal Commissioner and (2) M. M. Dalvi, Assessor and Collector of Taxes, whose reports have been brought on record (Exs. 649 and 644 respectively), do not speak anything of having heard any warning in the night of the 11th.

R. H. Kirad, the ex-Mayor of the Poona Municipal Corporation, gave evidence at Ex. 908. Incidentally, it may be pointed out that he contradicted S. B. Kulkarni by stating that the latter gave a continuous and running reply to the question put by Mithapalli. Kirad has stated that no one including the Municipal Commissioner told him that the Divisional Commissioner had convened a meeting. He asserted that since the Municipal Commissioner told the Corporation meeting that there was no danger to the dam, he kept quite and remained unperturbed. His evidence is not of much use so far as the question of warning is concerned. I will revert to his evidence at the time of the discussion of the happenings on the 12th and in particular the attempts at evacuation.

B. L. Shirole, another ex-Mayor gave evidence at Ex. 910. He has a petrol pump on the Jangli Maharaj Road. He says that he was sitting chit-chatting in the house of his friend, More at about 8-30 or 9-00 p.m. He then ordered tea and the boy, who brought the tea from a hotel near the Corporation Building told Shirole and his friend Telang, who was sitting with him, that some policemen had collected and some trucks had also assembled in the Corporation compound. Thereafter, Shirole, Telang and another corporator, one Gite went towards the Corporation. They saw two Sub-Inspectors standing in the compound. Shirole asked them what the matter was. They told him that water had risen high in the Panshet dam, that there was a possibility of floods and that they were taking precautions in that connection. Shirole also saw some constables in the compound. Shirole and his friends then



returned to the house, where they were originally sitting chit-chatting. Shirole adds that he heard somebody announcing while he was sitting in the house of More that there was danger of floods. In answer to a question by Mr. Phadke, Shirole stated that he got no information, whatsoever on the night of the 11th that arrangements were made by the civil authorities for warning and evacuation. Mr. Murudkar, on behalf of the civil authorities, drew the attention of Shirole to certain portions of his written statement (Ex. 911), wherein he has stated :

“ There (Corporation building compound) we inquired with some police officers that why were they gathering together. Somebody amongst them told me that there was a big crack in Panshet dam and authorities are trying their level best to see that the dam should not be damaged. In the discussion, he told us that if there would be any wrong to the Panshet dam, there would be a danger of coming floods on both sides of the river and so they are keeping trucks ready to shift the people residing on both sides of the river in the safest side.”

The witness stated that that statement was correct. Then his attention was drawn to another portion of his written statement wherein he has stated :

“ After half an hour, we also heard a noise on a vehicle that somebody was announcing that there may be a rise of water in the adjacent areas as the dam was in danger. When inquired, we know that it was a police vehicle.”

No question has been asked by Mr. Murudkar to the witness as to whether this part of the statement was true. As pointed out above, the witness had stated earlier that he heard the announcement that there was danger of floods. This statement stood in conflict with what was stated in the written statement. It was, therefore, the duty of Mr. Murudkar, if he wanted to rely upon what the witness had stated in the written statement, to ask him whether what he stated in the written statement was true. Shirole stated that he left for Bombay on that night. He says that before leaving for Bombay he made inquiries with the *Sakal* office and also the telephone exchange. He got no information from the telephone exchange. He, however, learnt from the *Sakal* office that the danger to the dam was averted. He then proceeded to add that he would not have left for Bombay on the night between the 11th and the 12th, if he had not learnt from *Sakal* that there was no danger to the dam. In answer to question by the Commission, the witness stated that he did not consider the news of *Sakal* as authorised. But he questioned the office because they might perhaps have had good information. He admitted that he could not gather as to who was giving replies from the *Sakal*, nor did he bring it to the notice of the person in the *Sakal* office that he (Shirole) had heard announcements from the police van that there was danger to the Panshet dam and in spite of that he (person from *Sakal* office) was giving out news to him that the danger was averted. He admitted that the question as to whether the danger to the dam continued to exist or had abated was a matter of great importance from his point of view. Yet he did not contact the higher authorities, such as the District Superintendent of Police or the Collector or the subordinate officials to get the news verified because it was midnight. He admitted that he knew Heble, District Superintendent of Police and Prabhakar, Collector, quite well. When pressed as to why he did not ask either of them, he gave a very typical reply, which is as follows :—

“ As I did not feel that water would enter my building on the riverside I did not think it necessary to consult the D. S. P. or the Collector.”

He admitted that he did have an idea that the Panshet dam was bigger than the Khadakwasla dam and he did realise that in case there was danger to the

Panshet dam, the resultant floods would be much bigger than the floods of 1958. He then proceeded to make a very important admission as follows :—

“ I had come to know in 1958, when I was Mayor of the Poona Municipal Corporation, that danger had arisen to the Khadakwasla dam.”

He further admitted that he did not realise that there would be danger to the Khadakwasla dam, because he did not give serious thought to that question as it was night time. He admitted that had he given serious thought to that question, perhaps, he would have realised that there was also danger to the Khadakwasla dam. Questioned as to what Karande told him when he had gone to the Corporation Building, the witness stated that Karande told him that there was a small crack in the Panshet dam and an attempt was being made to close that crack. As regards the announcement, which the witness said that he had heard sitting in the house of More, the witness stated :—

“ The impression that I gathered was that he (announcer) was making the announcement orally and not reading from any paper. The announcer was saying that the danger lay to the persons living in lowlying areas on the banks of the river.”

In my view, the evidence of Shirole, instead of supporting the evidence of Kekre and Chand, completely destroys the basis of that evidence. Two things clearly emerge from his evidence. One is that the announcement was being made orally and secondly, all that the announcer was saying that danger lay to the persons living in lowlying areas on the banks of the river. This also explains why the witness did not think it necessary to ask either the District Superintendent of Police or the Collector for correct information and also for the fact that the witness departed for Bombay that very night. It is an admitted fact that four of his houses fell down during the floods of 1961 and these houses were in the Shivajinagar area to the west of the Corporation Building. Had he really known about the danger to the Panshet dam, he would not have left for Bombay, because he knew that during the floods of 1958, danger had arisen to the Khadakwasla dam and that the water stored in the Panshet dam was far larger in volume than the water in the Khadakwasla dam and that he would also visualise that the Khadakwasla dam would breach in case the Panshet dam breached.

Nilkanth Waman Limaye, the proprietor of the Punam Restaurant, gave evidence at Exhibit 918. The Punam Restaurant is situated on the Jangli Maharaj Road. He states that he was in the Punam till 11 p. m. on the 11th of July and there were forty lodgers at that time. He asserts that till 11 p. m. while he was in the Punam, he heard no warnings having been given by anyone regarding the Panshet dam. The rest of his evidence relates to what happened on the 12th and it would be worthwhile to deal with it at the appropriate stage of the discussion. The only point that was made out against this witness was that, he had not submitted his written statement in answer to the public notice and that he submitted his written statement only after he received a letter from the Commission's Secretary. His explanation was :—

“ At that time (at the time of the public notice), I was thinking of contesting the elections to the Assembly. I felt that if I make a statement to the Commission, that may affect my election one way or the other. That is one reason why I did not submit any statement. The other reason was that Government appoints fact-finding Commissions on matters of public importance, but finally, does not endorse or accept those findings. I, therefore, felt that I would be wasting my time in submitting statements before the Commission. When I said that my statement affect the elections, I meant

to convey that propaganda may be made against me saying that I was sponsoring the cause of the people, because I wanted to get elected."

He denied the suggestion put to him by Advocate Murudkar that the police had given warnings on the previous night on the Jangli Maharaj Road from a vehicle, regarding danger to the Panshet dam. He denied having heard any such warnings.

N. B. Parulekar, the editor of *Sakal*, has given evidence at Ex. 912. I have already referred to that part of his evidence, which relates to the report of the Corporation meeting as published in *Sakal*. His evidence is not of much value so far as warnings given on the night of the 11th are concerned.

I have fully dealt with the evidence of the citizens who were examined before the Commission. I have dealt in a general way with the statements of citizens which have been brought on record without examining them and pointed out that most of them only speak of rise of water in the river.

The lawyers on behalf of the civil authorities had made an application stating that all the citizens who had submitted their statements should be examined before the Commission. This suggestion was not only impracticable, as it would have consumed several months' time, but was wholly unnecessary. So far as the statements of the citizens, submitted on behalf of the Citizens' Committee are concerned, they assert that no previous warning was given by Government, semi-Government or Municipal Authorities to the effect that the Panshet dam was in danger and heavy floods were expected. The lawyers on behalf of the civil authorities could not possibly make a grievance for not having examined these citizens. The statements of some of these citizens have been brought on record with the consent of the advocates on behalf of the civil authorities along with the reports of some officers and also of some other citizens who talk of some kind of warning having been given. (*vide* Ex. 923, Commission's order dated 10th August 1962). I was all along suggesting to the advocates on behalf of the civil authorities and the advocates for the Citizens' Committee that they should sit down together and produce an agreed list, in consultation with the Commission's counsel, of the citizens whose statements should be brought on record, without examining these citizens. Mr Murudkar, however, insisted on the Commission examining all the citizens who had put in their written statements and all the officers who had submitted their reports. The number of witnesses in that case, would have been more than 1,300. The Commission would have been required to sit for one more year for finishing such evidence. The suggestion, therefore, was rejected as unreasonable. The alternative prayer was that the statements of all the citizens and the reports of all the officers be brought on record and treated as evidence for all purposes. But this prayer was qualified by the phrase 'without prejudice to the main prayer'. The qualification meant that even if the statements and reports are brought on record, still the advocate was not prepared to give up his insistence on the Commission examining all the citizens and all the officers. As a matter of fact, to bring the statements on record without the examination of the witnesses would be more favourable to the case of those whom these statements support than examining these witnesses and thus expose them to cross-examination. I have passed an exhaustive order below Ex. 828 giving reasons as to why the request of the advocate for the civil authorities could not be acceded to. It was after the above order, that the agreed list referred to above was prepared. So, no ground for any complaint can possibly survive.

I have very carefully gone through the statements of these citizens which have not been brought on record. Some of these citizens are residents of the traditional low lying areas. Even among these citizens, there are a few who say that no warning was given on the night of the 11th. There is also conflict

even among them about the nature of the warning, whether the warning was in respect of the rise in water or danger to the dam. So far as other areas are concerned, there are a number of citizens, who say that no warnings were given in the localities in which they live. The majority of the citizens, in these localities, who say they heard warnings, have spoken of warnings having been in respect of rise in water or rise in the floods of the river and a few of them only have spoken about the danger to the Panshet dam. Surprisingly enough, there are two conflicting groups in the citizens of each of the localities in which they reside; some saying that the warnings merely spoke of the possible rise of water and some saying that the warnings stated that there was danger to the dam. Most of these witnesses have spoken about the warnings having been announced from a police van. If that is so, it is difficult to understand how one set of listeners merely heard about rise of water in the river and one set of listeners heard about danger to the dam. It is equally clear from these statements that the story of the text having been read out is a myth and an invention.

(f) *By Revenue staff in rural area.*—Before concluding this part of the discussion, it is necessary to refer to some of the documents produced on behalf of the civil authorities of the work done by the revenue officers on the night of the 11th, which documents were exhibited without examining the authors thereof. Ex. 1172 is an extract of the diary of M. S. Bhonsale, Mamlatdar, Poona City. Bhonsale states that on the night of the 11th, he attended the meeting at the Commissioner's office held for flood arrangement and thereafter remained in his office for making arrangements. It may be mentioned that Pharate (Ex. 862) does not support Bhonsale's statement that he (Bhonsale) attended the Commissioner's meeting. Ex. 1174 is an extract of the diary of Sopana Maruti Vhaval, Head Talathi, Saja-Mundhave. He says that at 8-30 p.m. on the 11th July 1961 he was called to the Taluka office and was told that there was a possibility of floods coming to the Mutha River. Ex. 1175 is an extract of the diary of T. S. Adivant, Talathi, Saja Parvati. He says that he was called on the night of the 11th to the office and told that there was danger of water from the Mutha River. Ex. 1176 is an extract of the diary of K. A. Gaikwad, Head Talathi. He too speaks of attending the Divisional Commissioner's meeting held for the purpose of the floods of the river. (Note: This is not corroborated by any evidence). He further said that he stayed in the Mamlatdar's office for the whole of the night. Ex. 1178 is an extract of the diary of A. S. Kamble of Saja Yeravada. He too says that he was called to the Taluka office at 8-30 on the night and told that there was a possibility of floods coming to the Mutha River. Ex. 1238 is the report of the Additional Mamlatdar, Haveli, dated 16th July 1961. This report says that in accordance with the instructions received in the meeting of the Divisional Commissioner, orders were issued to village officers of all villages situated on the banks of the Mutha River to inform all the villages by beat of drum about the apprehended danger of heavy floods to the Mutha River and to be in readiness to shift from the village Gaothan in case of emergency. Ex. 1239 is another report from the Additional Mamlatdar, Haveli, dated 19th July 1961. It gives the actual text of the warnings issued on 11th July 1961 to the villages in Haveli Taluka. Translated into English, it runs thus :—

“The water in the Panshet and Khadakwasla lakes is rising. Therefore, there is a possibility of heavy floods coming. Hence all persons should remain vigilant and should move to safe places in case perchance heavy floods occur.”

Ex. 1240 is the report of the Mamlatdar, Haveli, Barge. This has reference to the steps taken on the 12th and need not, therefore, be considered at this

stage. I have referred to the extract of Davandi register of villages Kondhave-Dhavde, Shivane, Khadakwasla, Nanded etc. (*vide* Ex. 1193) in another context. It is an admitted fact that meeting of Talathis was held in the office of the Mamlatdar, Haveli, on 11th July 1961. Ex. 1194 is an extract of the proceeding book for that meeting. Translated into English, it runs thus :—

“ There had been terrific rain during the last 2/3 days at Panshet dam and, therefore, there is a possibility of water flowing over the embankment of the dam. As a result of the above, there is a likelihood of heavy floods coming to the Mutha River. Instructions, therefore, by beat of drum should be given to people residing in all the villages on the banks of the river, that they should remain vigilant and should hold themselves in readiness for evacuating in case there was high rise of water. The Talathis should, therefore, remain present in the villages and in case of severe loss occurring as a result of heavy floods, they should submit independent reports .”

The diaries of all the Talathis and village Kamgars produced in this case speak of the presence of these persons in the said meeting. (I have not referred to the extracts of diaries of such of those Talathis who have not said anything specifically regarding warnings about floods or danger to the dam, but since they were present at the meeting, they were aware of the danger to the dam and the absence of that circumstance in their diaries has no significance at all). It appears that the Talathi meeting was held sometime in the afternoon. That means that the news about the difficult and dangerous situation at Panshet was known by the revenue officers before or at any rate, by noon. The Davandi extract of Nanded Village (Ex. 1193) shows that warning regarding danger to the dam was given at 4-00 p.m. on the 11th. Further, this inference receives support from the statement of Keshavrao Janajirao Mate, a resident of Khadakwasla (Ex. 1173) wherein he says that when he had been to the Mamlatdar's office for the Tagai meeting at 1-00 p.m., the Additional Mamlatdar, Barge, told him that danger had arisen to Panshet dam on account of heavy rains and in case the dam breached, there would be heavy floods.

The distinction between a mere warning regarding a possible rise of water in the river or possible increase of floods and a warning regarding possible or likely danger to the dam, is extremely important in the context of the situation in Poona. It is in evidence that floods of Mutha and Mula Rivers are a recurring phenomena. It is more or less an annual feature. Almost every year, warnings about the rise of water are given to people residing in the low-lying areas and steps for their evacuation taken. The severity of these precautionary measures varies according to the intensity of the floods. A mere warning, therefore, to the citizens living in the lowlying areas that there will be rise of water in the river or that there will be increase of floods does not convey any significance or serious news and the gravity would be completely lost on the citizens unless they are specifically told that the dam was in danger or was likely to breach and that the consequent floods would be very heavy and would extend to more than the six traditional lowlying areas. In order to awaken the citizens to the real danger, it was necessary to tell them in plain terms that not only there was danger to the dam but there was a likelihood of breach of that dam and that the floods coming in consequence thereof would be unprecedented. It is quite clear from the evidence led in this case that the citizens were never made aware that they were facing an unusual situation, a situation different from the situation of the normal floods. The civil authorities, in my view, have signally failed in the discharge of their elementary duty of giving a clear warning to the citizens about the impending danger of unprecedented floods as a result of the imminent breach of the Panshet Dam.

**PART II**

**SECOND TERM OF REFERENCE**

**VOLUME II**

## SECTION 18

THE WORK DONE IN RAISING THE EMBANKMENT BY THE MILITARY ENGINEERS ON THE NIGHT OF THE 11TH : MILITARY MESSAGES : MOHITE'S DEPARTURE FOR BOMBAY ON THE MORNING OF THE 12TH : HIS ROLE.

## I. The work of bag-stacking

Discussion regarding the events of the 11th night would not be complete without referring to the messages that were exchanged between the military engineer group on one side and Mohite on the other. I have already referred to Mohite's letter (Ex. 94) to Brigadier A. S. Bedi, Commander, Poona Sub-Area, which was written in pursuance of the telephonic conversation that took place between the two. The phone message was received by Bedi at 2-30 p.m. and the letter, Ex. 94, was received at about 3 p.m. Soon after the phone message A. S. Bedi rang up Colonel Braganza, Commandant, Bombay Engineer Group and directed him to keep 200 men ready to proceed to Panshet. Brig. Bedi along with Col. V. N. Samarth, Senior Staff Officer went to Panshet for personal reconnaissance. They reached at about 4-30 p.m. While they were returning from the reconnaissance they met the party of military engineers headed by Col. Braganza. Bedi gave his personal appraisal of the situation to Braganza. After Braganza reached the spot, Bhalerao explained the nature of subsidence to him, Capt. Bakshi and Jamadar Jaysing Ghorpade. Thereafter all the four went to the dam site. Braganza and Bakshi took the decision that the main task of the engineering party was the raising of the portion which had subsided with sand bags so as to prevent overtopping. After making his own reconnaissance, Bakshi estimated that 10,000 sand bags would be required. Capt. Bakshi started his work of laying sand bags from about 10-30 p.m. Braganza left the dam at 10-45 p.m. and reached the head-quarters at about 11-30 p.m.

## II. The Army messages

Braganza was instructed by Bedi to submit reports regarding the developments at Panshet from time to time. The first sitrep, Ex. 95, was initiated by Braganza and is addressed to head-quarters, Poona Sub-Area and the informees are the head-quarters, Maharashtra and Gujarath areas and head-quarters South Command. The message after referring to the despatch of the personnel of the Bombay Engineer Group states—

"Treat this as first sitrep. Next sitrep will be sent 2,200 hrs. today.

Copy of this signal sent to Commissioner, Poona Division by hand.

Copy by hand to :—

Shri S. P. Mohite, Commissioner, Poona Division, Poona."

By sitrep is meant situation report. It is an admitted fact that Exhibit 95 was received by Mohite at the conclusion of the Divisional Commissioner's meeting in the Council Hall. It is common ground that Sitrep No. 2 which stated 'nothing to report' was not sent to Mohite.

(a) *The message (Ex. 96) : The information it conveyed :  
Whether Mohite received it*

Ex. 96 is sitrep No. 3. This was initiated by Braganza from his Kirkee office at Poona at about 11-40, that is to say, immediately after his return

from Panshet dam. One of the points hotly in dispute in this case is when this message was received and by whom and whether Mohite saw this report on the 11th of July or, in any case, before leaving for Bombay on the morning of the 12th by the Deccan Queen. Ex. 96 runs thus :—

“operation BAGALBHAGAT (.) alfa (.) recco report on task follows (.) thirty foot section of west side of PANSHET earth dam subsided appreciably (.) crack at top caused leak (.) unusual rains have raised level of reservoir to point of danger of overtopping (.) civil labour at dam exhausted by two days continuous work to plug leak and raise subsided portion (.) bravo (.) action by troops (.) sand bag wall being constructed to raise level of subsided portion (.) 2,000 sand bags to be laid during night eleventh, twelvth (.) estimate completion 08-00 hrs. twelvth (.) revetment of upstream face of dam to be done by day (.) all informed(.)”

“Copy by hand to :—

Shri S. P. MOHITE, Commissioner, Poona Division, POONA.”

There is an endorsement in the margin of this message which has been given a separate Ex. as Ex. 95A. The endorsement as it reads to-day runs thus :—

“Immediate Please

11-30 A.M.

sd/-

12-7

sd/-”.

The word ‘BAGALBHAGAT’ is the technical word devised by Brig. Bedi for describing the operation which the military engineers were to carry on at Panshet. The word, ‘Recco’ stands for reconnaissance. The relevant part of the message begins with the words ‘thirty foot section’. The substance of the message is that 30’ section of Panshet dam had appreciably subsided. There were cracks at the top of the dam. Unusual rains had raised the level of reservoir to the point of danger of overtopping. It is thus evident that the message contained grave and serious news about the condition of the Panshet Dam. It not only speaks of subsidence of 30 ft. portion of the dam to an appreciable extent, but it also speaks of cracks at the top of the dam and the fact that the level of the reservoir had risen to the point of danger of overtopping.

This message was dictated by Bakshi (Ex. 530) to Capt. Murthi, who was the duty officer from 20-00 hrs. on the 11th to 07-20 hrs. on the 12th. Murthi gave this message after the same was typed out to the duty clerk and the latter gave it to Gangaram Karle, the despatch rider. Murthi states that he had told the despatch rider that the message was urgent and, therefore, should be immediately delivered to the persons concerned. He adds that the despatch rider returned round about the midnight and told him that he had delivered the message to the respective persons.

Gangaram Krishna Karle, the despatch rider (Ex. 809), in his deposition states :—

“Capt. Moorty handed over three envelopes for being despatched to H. Q. Southern Command, Poona Sub-Area and Commissioner Mohite. All these envelopes were closed.”



A watchman was sitting in the Council Hall and Karle asked him to whom the envelope was to be delivered. The watchman told him that the same may be handed over to him and that he would immediately go to the Commissioner and hand it over to him. Karle warned him that this was an urgent message and must be delivered to the Commissioner. Karle says that he handed over the envelope to the watchman at about 11-40 or 11-45 p.m. Karle explains that as he did not know the location of the Commissioner's bungalow he asked the watchman about it. He made these inquiries because he wanted to deliver the envelope personally to Mohite. According to Karle, the watchman assured him that it was part of his duty to deliver the envelope and added that he would do it immediately. Karle added that all important despatches addressed to outsiders are sent in covered envelopes and only messages that pass between the office and the signal centre are on open pieces of paper.

The fourth sitrep did not also contain any information. Therefore its copy was not sent to the Divisional Commissioner. I will refer to the messages sent by the military engineers on the 12th at a subsequent stage.

Shaikh Hussain Raj Amargol (Ex. 811) was the night watchman in the Divisional Commissioner's office on the relevant date. He says :

"I am the only person to carry on the duties of night watchman. No one assists me. Even if the despatch is urgent, all that I do is that I keep it on the table of the head clerk. I again say that if the person delivering the message tells me that the despatch is urgent, then I show him the residence of the commissioner. I again say that I tell him that he should go to the Commissioner's residence. I cannot leave the Council Hall during night time."

He admits that a messenger approached him some time before mid-night with an envelope and asked him to take delivery thereof. He also admits that the messenger did tell him that the message was important and that it must be delivered immediately. Shaikh Hussain says that he told the despatch rider that if the message was urgent and must be delivered immediately, then the despatch rider should go to the Commissioner's residence and hand it over to him. He admitted that one person was sleeping in the Council Hall at the time when the message was brought.

Shaikh Hussain was originally serving in the Collector's office as a peon. He retired in 1960. He was re-employed in the Divisional Commissioner's office from 1960 and is still in service.

Rajput has been working as head clerk in the Divisional Commissioner's office since 29th June 1961. According to Rajput, he saw this message lying on his table at about 11 a.m. on the 12th when he went to the office. The message was open and not contained in the envelope. He says that oral instructions have been given to the watchman saving even when the message is urgent, the night watchman should not leave the Council Hall for delivering the same to the Commissioner. According to him, these instructions are oral and there are no written orders in that respect. He admits that he does not know who has given these instructions and that he learnt about these instructions from Hussain Raj Amar Gol.

According to Rajput, even urgent tapal remains on his table till he picks it up at 11 a.m. and no arrangement has been made for the delivery of urgent tapal to the Commissioner received during night time. Rajput says that he made the endorsement in the margin "immediate please", below that he put the figures and letters "11-30 a.m."; below that he put his initials and below that he put the date "12-7". Joshi, the Assistant Commissioner, has put his initials below the initials of Rajput. It is the case for Mohite that he did not receive this message till his departure to Bombay and learnt about it on his return from Bombay on the 12th. It is further his case that at about 7 a.m. on 12th July 1961 he rang up the Collector and enquired about the latest position of the Panshet Dam. His case may be put in his own language as follows (Para. 12, written statement Ex. 517):—

"The Collector informed me that he had received reports of the water levels at the Panshet and Khadakwasla Dams which indicated that the level at Panshet had remained constant, between 11-15 p.m. on 11th July 1961 and 5-30 a.m. on 12th July 1961, and that at Khadakwasla it had gone down during the same period, and the level at Khadakwasla at 5-30 that morning was the lowest touched since the morning of the 10th. I informed him that I had to attend an important meeting at Sachivalaya, Bombay, that day at 11-30 a.m., concerning finalisation of the Agricultural programme under the 3rd Five-Year Plan of the Maharashtra State. In view of the information which the Collector gave me and Shri Desai's statement in the meeting the previous afternoon that the dam would be saved if the night passed without a mishap, I thought the emergency had passed. Consequently, I informed the Collector that I would attend the meeting at Bombay and return to Poona the same evening. The Collector said that in view of the information he then had about the condition of the Panshet Dam, he saw no reason why I should cancel going to Bombay on that day."

In other words, Mohite's case is that he tried to ascertain from Prabhakar as to what was the position of the Panshet dam before going to Bombay and when the Collector gave him information regarding water levels both at Panshet and Khadakwasla, he was satisfied that the emergency had passed, particularly because of the assurance given to him by Desai viz., that the dam would be saved if the night passed without a mishap. Now let me see on this point what Prabhakar has to say. At paragraph 34 of his written statement Prabhakar says :

"It was at about 7 a.m. that the Commissioner rang me up and enquired about the position at Panshet Dam. I informed him of the telephone message that I had received during the night and earlier that morning about the water levels at Panshet and Khadakwasla Dams. He desired to know whether the position had improved or deteriorated. I informed him that the water level at Panshet Dam had remained constant from 11-15 p.m. on 11th July 1961 to 5-30 a.m. that morning. At Khadakwasla, the level had decreased from 30-30 at 9-45 p.m. on 11th July 1961 to 29-60 at 5-30 a.m. on 12th July 1961. I also told him that this level at Khadakwasla was the lowest touched since 10th July 1961. The

Commissioner said that there was an important conference at Bombay that day concerning finalisation of the Agricultural programme under the 3rd Five-Year Plan of Maharashtra State and it was essential for him to attend this conference. He further told me that in view of the situation having improved at Panshet and Khadakwasla, he would be leaving for Bombay that morning by the Deccan Queen. I said that I saw no reason for him to cancel his trip to Bombay in the light of the information I then had."

In other words, Prabhakar goes a step further and attributes to Mohite a statement, viz. that from the information given by Prabhakar, he (Mohite) concluded that the situation had improved and, therefore, he would be leaving for Bombay that morning by the Deccan Queen. In brief, the case for Prabhakar and Mohite is that before Mohite decided to depart for Bombay and before Prabhakar gave his consent to Mohite's departure for Bombay, there was a discussion between the two and on the basis of the exchange of information a conclusion was drawn that the dam was safe. That being the case there was no reason why Mohite should not go to Bombay to attend the meeting to be held for the finalisation of the Agricultural Programme under the 3rd Five-Year Plan of Maharashtra State.

The important question to be considered is whether, if Mohite had received the message at Ex. 96, his assessment of the situation would have been different from the one he is supposed to have made on the morning of the 12th after consulting Prabhakar. I have already cited the message Ex. 96 in full. I have also pointed out that the information contained in the message was of a grave character and was such as to cause anxiety about the condition of the dam. The message did not say anything about the water level, nor about the difference in the level of water and the level of the embankment. At the same time in plain terms, which are more easily understood by a layman than is conveyed by such information as water level etc., the message stated that there was an appreciable subsidence in 30 ft. section of the dam, that there were cracks at the top and that the water level in the reservoir had risen to the point of the danger of overtopping. This clearly indicated that the position was such that the dam would be over-topped at any moment. It is this message which, for the first time, spoke of the likelihood or imminence of overtopping. From that point of view, this is the most important among the messages sent so far on the wireless or otherwise. Overtopping in the case of an earthen dam is necessarily fatal. Of course, grotesque attempt has been made to attribute to Desai, the S. E. the statement that an earthen dam is likely to breach if overtopped. It is impossible to believe that even a junior engineer would make such a fantastic statement, muchless an experienced engineer like Desai, who had risen to the status of the Superintending Engineer. One can easily imagine why such a fantastic statement has been attributed to Desai. That reason seems to be that even if by any chance the Commission comes to the conclusion that the message at Ex. 96 was received by Mohite, still that would not prevent Mohite from departing to Bombay, because all that the message said was that there was danger of overtopping and overtopping is by no means necessarily fatal because it involves only a likelihood of breach and not certainty of breach.

Mohite was asked questions by the Commission in regard to his appreciation of the contents of Ex. 96. Mohite admitted that it was an important message. These questions and answers are worth-citation :—

“ Q. Do you not think that the impression that you gathered by reading this message was that the situation at the Panshet Dam was grave and serious ?

A. I would agree that the condition of the dam was dangerous. I do not think that the condition of the dam was grave and serious. I say this because in the latter part of the message it is stated that the military engineers would put up 2,000 sand bags by the night to raise the level of the subsided portion and next morning take up revetment work.”

Mohite has tried to make a distinction between the grave and serious condition of the dam and dangerous condition of the dam. He was prepared to agree that it was a dangerous condition. But he was not prepared to agree that the condition was grave and serious. The distinction sought to be made by Mohite is a distinction without difference. At the same time, it is interesting to see the reason he has given for repudiating the suggestion that the condition of the dam was grave and serious. That reason is that in the later part of the message it is stated that 2,000 sand bags would be laid during the night, which would require about 8 hours and the next morning the work of revetment of the upstream face would be undertaken. The figure ‘2,000’ is an unfortunate mistake and it should really have been 10,000. But that does not matter so far as the interpretation of the message and Mohite’s understanding thereof is concerned. For that purpose we will have to take that ‘2,000’ is a correct figure. All that Braganza stated was that they would be laying down 2,000 sand bags during night time which work would occupy about 8 hours and on the next morning they would undertake the work of revetment of the upstream face. Do these words convey any assurance, by any stretch of imagination, that the dam would be saved if 2,000 sand bags were dumped on the sinking portion, during night time ? Braganza was merely referring to the nature of the work to be done by the party. The party was going to undertake the construction of a sand bag wall and in case that was successful, it would be possible to undertake the work of revetment next morning. This part of the message in no way minimises the gravity of the situation as depicted in the first part of the message. Mohite’s quibbling and playing upon words suggested to me that even if he had received the message at Ex. 96, he would still have left for Bombay under the belief that the dam would be saved in view of what is contained in the second part of Ex. 96. That is why a specific question was put to him to the following effect :—

“ Q. Supposing you had received the message at Ex. 96 earlier on the night and read it with the usual care as a highly placed officer, would you still have left for Bombay on the next morning, assuming that you had received no further message from Panshet ?

A. I am unable to give any reply to the question."

I could not understand why Mohite should dodge the issue and evade giving a reply to a straight question. Another question had, therefore, to be put to him to the following effect :—

"Q. Would you not agree that it would have been unwise to have departed on a journey to Bombay in the face of the situation, as revealed by Ex. 96?

A. It is not possible for me to answer that question. I would add that it is not possible for me to say what I would have done on the morning of the 12th."

These answers, in my view, betray a guilty consciousness on the part of Mohite. They indicate that Mohite must have received the message and yet acted in the way he did. It was not possible for him to give a positive reply viz., that he would still have departed for Bombay, the message notwithstanding. That is why he has taken recourse to this double talk. When asked as to why he did not try to secure the latest information from Desai or Khursale, Mohite replied that he expected them to inform the Collector if there was anything adverse or worsening of the situation or if there was anything worth-reporting. Gopal Ganesh Joshi, the Assistant Commissioner (Ex. 819) frankly admitted that on reading the contents of the message, he did realise that it was a very urgent message as it contained important information about the condition of the dam. Later on, he stated :—

"I do consider that it is unfortunate that this important message should not have reached the hands of Mohite during the night between 11 and 12."

This reply is quite in consonance with the plain reading of the contents of Ex. 96 and embodies the reaction of a man of commonsense. I, therefore, have no hesitation in coming to the conclusion that in view of the fact that the dam breached on the morning of the 12th, while Mohite was away from Poona, Mohite has realised the rashness on his part in departing for Bombay in the face of the impending crisis, and, therefore, would be, *prima facie*, interested in putting forward the plea that he had not received the message at all.

That takes me to the analysis of the circumstances which lead me to the conclusion that the message must have been received by Mohite on the night of the 11th. It is the case for Mohite that no special arrangement was made for receiving messages from the military authorities on the night of the 11th. According to him, there was no need of making any such arrangement, because it was decided that Desai should be the recipient of these messages. I propose to examine this question rather closely because it has an important bearing upon the point that is urged on behalf of the civil authorities, that there was no need of making any special arrangement for the receipt of messages from the military personnel. In this connection reliance is placed on Ex. 94, the letter written by

Mohite to Brig. Bedi in the afternoon of the 11th of July 1961. The last sentence of that letter runs thus :—

“Shri. S. V. Desai, Superintending Engineer, Deccan Irrigation Circle (II), Poona is the Officer-in-charge of these operations on our side. His telephone numbers are :

Office : 3407

Residence : 7332.”

It is necessary to remember that this letter was written before Brig. Bedi had given instructions to Col. Braganza for mobilising army engineers to go to Panshet. It was necessary that army engineers were informed about the situation at Panshet and instructions given to them about the nature of the work. S. V. Desai, of course, would be the best person to explain the situation and also to give instructions to the engineers as to how the work was to be carried out. That is why Mohite says that S. V. Desai was the officer-in-charge of the operations on the civilian side. That means that so far as the work of operations was concerned, S. V. Desai was to serve as a link between the civilian authorities and the military engineers. After the receipt of this letter Ex. 94, Bedi instructed Braganza to mobilise military men. In his written statement Ex. 93A Brig. Bedi says :

“I then rang up Col. J. V. P. Braganza Commander, Bombay Engineer Group and ordered that 400 men were to be immediately earmarked for this task and that he was to work out the details of the requirement in consultation with the Superintending Engineer.”

This clearly supports the inference drawn by me above. It was the task of Desai to keep contact with the military engineers and to explain to them the details of their requirement. Col. Braganza in his written statement, Ex. 294, says :

“He (Brig. Bedi) had agreed to make troops available and as the work was considered technical, he ordered me to contact the Commissioner, Poona Division, Capt. S. P. Mohite, and render all assistance as soon as possible.”

It is significant that Brig. Bedi had asked Braganza to keep contact with Mohite generally. At para. 3 Braganza says :

“Shortly after Brig. Bedi's telephonic instructions, The Commissioner, Capt. S. P. Mohite, telephoned me to say that the Superintending Engineer, Shri. Desai was in his office and could give me details of the work to be done and the help required. Shri. Desai who came on the phone said that the task was to assist in plugging leaks and building up with sand bags a portion of the earth dam which had subsided. He estimated that 200 men would be required immediately to work through the night and they should be relieved by a similar party of 200 men to carry on work the next day. I told Shri. Desai, I would get the first party moving as soon as possible and expected it to reach Panshet between 18-00 and 19-00 hrs. I also mentioned that I would come with the party myself to gauge the resources required and report to the Commander Poona Sub-Area. Shri. Desai said he would be at Panshet about that time and would meet me there.”

It would be clear from the above that Desai was to explain the nature of the work and give details of the requirements. Desai did explain his requirements and also the nature of the work on the phone and assured Braganza that he would be on the spot at the time when the engineer party would arrive at Panshet.

Incidentally, Braganza's statement about the talk he had with Desai disproves Mohite's far-fetched interpretation viz., that Desai wanted 400 men to work at one time and actually he remained contented with the services of 200 men that were offered to him. According to Braganza, Desai himself estimated that 200 men would be required to carry on the work for the night and they would be relieved by 200 men to carry on the work the next day. Taking advantage of the fact that Desai was to explain the nature of the situation and the details of the work to the military authorities Mohite has made himself bold to put forward the theory that Desai was to serve as a liaison between engineering group at Panshet and the civil authorities. How was that role to be fulfilled by Desai? Questions were asked to Mohite on this point and the replies given by Mohite are typical :—

“The manner in which Mr. Desai was to keep contact with the military engineers was left to be decided by him. It is, however, true that he was to be a sort of liaison between the civil authorities on the one hand and the military authorities on the other. Neither I nor Prabhakar was to remain in direct touch with the military engineers.

Q. That being the case, did you not think it appropriate that Desai should be asked to remain in the control room to receive messages from the military engineers?

A. I did not think it necessary to ask Desai to remain in the control room.”

At this stage, it is necessary to remember that copies of the communication that came from the military engineers were forwarded to Mohite and copy of no message was sent to S. V. Desai. Desai's phone number was taken but no message was sent to him on phone either. The first message sent by the military engineers was sent to Mohite. This was the first sitrep copy of the second sitrep was not sent to Mohite, because it contained no information, nor was the copy of that sitrep sent to Desai or any one else. Copy of the third sitrep, Ex. 96, which is the subject matter of the present discussion was also sent to Mohite. It will be pointed out hereafter that copies of all the messages that were sent by the military engineers on the 12th were sent to S. P. Mohite and none at all to Desai. These messages are Exs. 97 and 98. Ex. 97 speaks about the breach of the dam and Ex. 98 about breach having widened to about 500 ft. length. A question then arises as to how is it that if Desai was to serve as a liaison, copy of no message was sent to Desai and that copy of each and every message was sent to Mohite. Questions were, therefore, addressed to Mohite on this point. The questions and answers are worth-noting :—

“Q. In view of the fact that no copy of the message from the military engineers has been sent to Desai nor was he mentioned

as an informee in any of these messages and further in view of the fact that the copies of the messages from the military engineers were sent to you, does it not follow that the arrangement was that the military engineers should keep themselves in touch with you?

I cannot explain why no copy was endorsed to S. V. Desai, nor can I explain why copy of the messages were sent to me. I deny that there was any arrangement that the military engineers should keep direct contact with me or with Mr. Prabhakar. There was neither an arrangement nor an understanding that the copies of the messages received from Engineer Group by the Sub-Area Commander should be sent to me. I am unable to explain as to how the copies of the messages were sent to me. I did not ask the military engineers working at the Panshet dam to remain in touch with the emergency control room."

In answer to questions by the Commission's Counsel, Desai stated:

"Mohite had arranged that telephonic communication should be maintained between me and Brig. Bedi. Soon after the meeting with the Commissioner and the Collector from my office I telephoned to Brig. Bedi, asking him whether he knew the route to Panshet. He said that he had been there before. Thereafter, during the whole of the night, I received no message, nor did I telephone to Brig. Bedi."

Desai was severely cross-examined by Mr. Ghaswala, but no question was asked to him suggesting that the understanding was that there should be communication between the military engineer group on the one hand and Desai on the other regarding information about the situation at Panshet. The theory, therefore, that as Desai was to serve as a liaison between the military engineer group and the civil authorities, there was no need for making any arrangements in the Commissioner's office for the receipt of communications from the military engineers has no legs to stand upon.

The matter, however, does not rest there. Ex. 95, the first sitrep, specifically stated that "the next sitrep will be sent 200 hours today." It is common ground that a copy of the second sitrep was not sent to Mohite. When Ex. 95 stated that "the next sitrep" would be sent that night at about 10-00 p.m. or so, Mohite would naturally make some arrangement for the receipt of that sitrep. The first sitrep Ex. 95 was received in the Commissioner's office. The next sitrep, as per the promise contained in Ex. 95, would also, in the ordinary course, go to the Council Hall. Ordinarily, therefore, Mohite would make some arrangement for the receipt of the next sitrep in his office and give instructions to the person who would receive the same that it should be redirected to his home address. So far as Mohite was concerned, "the next sitrep" was Ex. 96 itself which was initiated at 11-40. Notwithstanding the fact that Mohite expected to receive the next sitrep and that too at an odd hour of the night we are told that no arrangement was made in the Commissioner's Office for the receipt of the same and the usual arrangement continued to hold good. And what was the usual arrangement? The arrangement consisted



in keeping a night watchman who had instructions not to leave the Council Hall although he received an urgent message during that night and to hand over that message to the peon who brings the tapal at about 8-30 or 9-00 a.m. The peon would then place the message on the table of the head clerk who would collect the same after he went to the office, which would be some time after 11-00 a.m. We are told that this arrangement has been working satisfactorily all these years in the Commissioner's office and no urge was felt on that night for making any special arrangement for the receipt of messages during night time and for their delivery to Mohite inspite of the fact that a crisis was brewing at Panshet and important messages were expected to come during night time and when actually warning was given that the next sitrep would be sent at a particular time during that night. In order to wriggle out of the difficulty created by the expression 'the next sitrep would be sent 22-00 hours, today', Mohite has found out a very ingenious excuse. The questions and answers are worth-quoting :—

- Q. Your attention is specifically invited to the following message in in Ex. 95 'next sitrep will be sent 2-00 hours today'.
- A. I must have read the contents of that message.
- Q. Then you must have waited for the second message at 22-00 hours ?
- A. I was not waiting for it.
- Q. Where you not anxious to receive the message and know its contents ?
- A. There was no reason for me to be anxious. I had no discussion with Bedi as to how the messages received from the military engineers at Panshet were to be despatched and to whom. I had no talk with Bedi on that point. Bedi never told me that copies of the messages received from Panshet would be sent to me.
- Q. Why did you not ask Bedi to send copies of the messages received during night time to you or to the Collector ?
- A. It was understood that messages should be received by Desai and Mr. Desai was expected to communicate the messages to me or to the Collector.
- Q. What were your difficulties in instructing Bedi that copies of the messages should be sent directly to you or to the Collector ?
- A. The question did not arise.
- Q. Would it not have been more convenient if the arrangement was that copies of all the messages received from the military engineers should be sent to you or to the Collector or to both ?
- A. The arrangements made by us were sufficient. The question of convenience, therefore, did not arise. When I read the sentence in Ex. 95, viz., 'next sitrep will be sent 22-00 hours to-day', I did not know whether copy of the next sitrep would be sent to me. I did not think it necessary to instruct that the copy of the next message should be delivered to me."

I have already exposed the falsity of the theory that Desai was expected to keep himself in touch with the military engineers. I have also emphasised

that Desai was not even asked to remain in the control room. I have pointed out that copies of all the messages that were sent by the military engineers were forwarded to Mohite and to none else. These circumstances are indicative that the understanding was that copies of the messages should be sent to Mohite. This conclusion was reinforced by the words, 'next sitrep will be sent 22-00 hours.' Mohite says that these words did not indicate to him that a copy of the next sitrep would be sent to him. This is ingenious but unconvincing. If there was any ambiguity in the matter, Mohite would have asked Bedi or Branganza to send a copy of the next sitrep and also to continue to send copies of all the siterps to him. He did not do so because he was certain that the copy of the next sitrep would be sent to him. As a matter of fact, the copy of the next sitrep, which in this case was the third sitrep, was sent to Mohite, and his explanation, that he did not know whether copy of the next sitrep would be sent to him, is clearly an afterthought.

Now in this back-ground let us turn to the evidence of the watchman Shaikh Hussain Raj Amargol (Ex. 811), head clerk Rajput (Ex. 817) and Assistant Commissioner Joshi (Ex. 842) to see what arrangement was made in the Commissioner's Office for receiving messages during night time. I have already pointed out that the Collector had made arrangement for keeping three clerks in the Deputy Chitnis' office for the whole of the night to receive messages and to transmit them to the Deputy Chitnis and also to the Collector during night time. Similar arrangement must have been made in the Commissioner's Office. It is difficult to imagine that the usual arrangement for the receipt of messages by the night watchman would be allowed to continue for that critical night between the 11th and 12th, when important messages were expected to be received from the military engineers. The first message received from the military engineers (*vide* Ex. 95) did not convey any idea regarding the condition of the dam, nor any idea about the assessment formed by the military engineers about the situation. Mohite, therefore, would ordinarily be anxious to receive communication containing the assessment of the military engineers regarding the Panshet situation. He was, therefore, expected to have his head clerk or somebody, either singly or in a body, to remain in the Council Hall, for receiving messages and to transmit them to the Commissioner at his bungalow. In this connection, it may also be noted that in pursuance of the decision in the Divisional Commissioner's meeting, some trucks were to remain in the compound of the Council Hall. It is plain that, in that event, some responsible person would be kept in the Commissioner's Office for giving instructions to the drivers.

Shaikh Hussain Raj Amargol in his deposition stated that he was the only person to carry on the duty of a night watchman and there was none to assist him. He asserted that even if the despatch was urgent, all that he could do was to keep it on the table of the head clerk. Realising that this was an absurd position, Shaikh Hussain Raj Amargol tried to make an improvement upon that position and said :—

"I again say that if the person delivering the message tells me that the despatch is urgent, then I show him the residence of the Commissioner,

I again say that I told him (the despatch rider) that he should go to the Commissioner's residence. I cannot leave the Council Hall during night time."

Shaikh Hussain Raj Amar Gol had to admit that the messenger who brought the message at midnight told him that the message was important and that it must be delivered to the Commissioner immediately. Shaikh Hussain Raj Amar Gol, however, explained that he told the despatch rider to go to the Commissioner's residence, in case he felt that the message was urgent. He, however, added that the messenger who brought the message did not say that he did not know the Commissioner's residence. This is contradictory to what the despatch rider stated, to whose deposition I would come presently. Shaikh Hussain Raj Amar Gol's evidence, therefore, boils down to this : This messenger did tell him that it was an urgent message and must be delivered immediately. He told the messenger that he should go to the Commissioner's house and hand it over to him. The messenger did not say that he did not know the Commissioner's residence. The question then arises : how is it that the messenger delivered the message into the hands of Shaikh Hussain Raj Amar Gol and how is it that Shaikh Hussain Raj Amar Gol accepted the same. The questions and answers will speak for themselves :—

"Q. You have admitted that the messenger told you that the message was urgent and that it was required to be delivered to the Commissioner immediately. You assert that you told him that he should go to the Commissioner's residence. You now say that you gave him the address of the Commissioner's residence. If that is so, how is it that the messenger left the envelope with you and how is that you accepted it in those circumstances ?

A. I cannot say why he left the envelope with me. It is not true that I told the messenger that, as he did not know the address of the Commissioner's residence, I would myself immediately go to the residence and hand over the packet to him."

The absurdity of the position is clear for any one to see. The absurdity is heightened if a reference is made to the evidence of Murty, the Duty Officer and G. K. Karle, the despatch rider. Unnecessary reflections have been sought to be cast on Murty, because in his letter he stated that he consulted Mr. Bakhle for drafting his written statement. In answer to questions by Mr. Murudkar, Murty explained that he approached Mr. Bakhle, the Senior Advocate in pursuance of a letter received from the Commission, stating that he should report himself to Mr. Bakhle. His attention was drawn to the statement contained in his letter viz., that he drafted the written statement after consulting Mr. Bakhle. Murty (Ex. 813) replied :

"I contacted Mr. Bakhle as per the letter and the only thing that he told me was that I would be required to put in a written statement in connection with the message sitrep No. 3. I prepared the written statement on my own and there was no question of consulting Mr. Bakhle in drafting my statement."

Before allowing this question, I tried to prevail upon Mr. Murudkar not to insist upon the question which implied an unnecessary reflection upon the

Senior Advocate of the Commission. Since Mr. Murudkar insisted upon asking this question, I allowed the question and this was the reply given by Murty. His reply is crystal clear and ought to satisfy any reasonable man. But this does not appear to have happened judging from the arguments advanced on behalf of the civil authorities. Murty was a Commissioned Officer in the Army of India. It is ridiculous to suggest, in the first place, that Mr. Bakhle would try to influence a man of the status of a Commissioned Officer in the Army of Independent India. It is still more ridiculous to suggest that Murty would in any way be influenced by what the Senior Advocate told him. It was the duty of the Senior Advocate to help those who approached him for advice in the matter of drafting written statements. Litigants are usually represented by lawyers. Ordinary witnesses called by the Commission are not represented by lawyers and that is why, according to the practice followed in England they are expected to approach the Senior Advocate on Record or the Treasury Solicitor, as in England, for consultation in the matter of the form and the manner in which the written statements are to be put in. This consultation has nothing to do with the substance or the contents of the written statement. To suggest, even indirectly that Capt. Murty has been influenced by Mr. Bakhle in the matter of contents is to show a very low taste and lack of sense of decency in these matters. All this attack on Murty is based on the circumstance that Murty did not think it necessary to mention in the written statement that he gave instructions to the despatch rider that the message was urgent and, therefore, should be delivered immediately. For Murty, the question as to what instructions were given to the despatch rider was a matter of no consequence. It was, therefore, wholly unnecessary for him to make mention of that insignificant detail. As a matter of fact, there is little room for controversy on this point. If one reads the entire evidence on the point, one is inevitably driven to the conclusion that Murty must have instructed Karle that the message being urgent, must be delivered immediately, e.g., Braganza says: 'I told the duty officer that these messages must be sent immediately' and Amar Gol says that Karle did tell him that the message was urgent.

While I am on the evidence of Capt. Murty, I may refer to all parts of his evidence which would be relevant for all aspects arising out of the delivery of the message at Ex. 96 in the Commissioner's Office. The first point on which his evidence is material is: what is the normal practice in delivering such messages, whether these messages are put in envelopes or are sent as open messages, and Murty says:

"As far as I know, the normal practice is to put the message in an envelope and then hand it over to the despatch rider."

The second point which emerges from his evidence is that he told the despatch rider that the message was urgent and, therefore, copies should be immediately delivered to the addressees concerned. Thirdly, he stated that the despatch rider returned within about 15 to 20 minutes and told him that he had delivered the messages. It is difficult to impeach the testimony of Murty on any one of these points. The only point that has

been urged against the evidence of Murty is the statement made by Col. Braganza to the following effect :—

“No special instructions were given to the messenger.”

What Braganza meant to suggest was that he did not give any special instructions to the messenger. This is clear from what he stated subsequent to the above answer, in further cross-examination of Mr. Murudkar, which portion has been completely ignored by the lawyers submitting the arguments on behalf of the civil authorities :—

“Capt. Murty was the Duty Officer on that night. The messenger must have reported to Capt. Murty saying that the messages were delivered..... I handed over the message to Duty Officer Capt. Murty at 11:40. I dictated the message and Duty Officer Murty took it down. It was then typed. I told Duty Officer Murty that these messages must be sent to the addressees immediately.”

These answers instead of detracting from the merits of Murty's evidence fully support him.

I will now take up the evidence of Gangaram Krishna Karle (Ex. 809), the despatch rider. Karle states that Capt. Murty handed three packets for being despatched to the head-quarters, Southern Command, Poona Sub-Area and the Commissioner Mohite and all these three packets were closed and addresses were written on these closed packets. He handed over the packet to the Head-quarters Southern Command first. He then went to Sub-Area Command and delivered the packet to the duty clerk. Thereafter he went to the office of the Divisional Commissioner. A watchman was sitting in the hall and he asked the watchman as to whom the packet was to be delivered. He said that the packet may be handed over to him and promised that he would immediately go to the Commissioner. Karle told him that this was a very urgent letter and must be delivered to the Commissioner. The watchman promised that he would immediately go and deliver it.

In order to reinforce his statement, Karle states that on the 12th Murty gave him two packets, one to the Head-quarters, Southern Command and the other to the Commissioner Mohite. Again at 1-15 p.m. the same day, Murty gave him three packets for being delivered to the Head-quarters, Southern Command, Poona Area and Commissioner Mohite. He delivered these packets to the respective addressees. The evidence of Karle fully supports the practice to which Capt. Murty has testified *viz.*, that such messages are sent in closed envelopes. In answer to questions by Mr. Sawant, Karle stated that when he went to the Council Hall there was another person sleeping. This part of Karle's evidence was vehemently attacked by Mr. Murudkar in his cross-examination and it was suggested that Karle was telling a lie when he says that he saw some other person sleeping by the side of the watchman. His statement *viz.* that the message was sent in closed envelopes was challenged equally vehemently in the cross-examination by

Mr. Murudkar. The answers given by Karle will explain the character of the questions asked to him on this point :—

“ I deny that I am telling a lie when I say that I told the watchman in the Council Hall that the packet was important and must be delivered immediately to the Commissioner. .... I deny the suggestion that I am telling a lie when I say that there was some other person sleeping in the Council Hall when I met the watchman there. I also deny the suggestion put to me that I am telling a lie when I say that all the messages delivered to the Divisional Commissioner on the 11th were in covered envelopes.”

The Divisional Commissioner's watchman himself has let Mr. Murudkar down by admitting that what was handed over to him by Karle was a closed envelope and that it was at that time a friend of his was sleeping by his side in the Council Hall. The third suggestion challenging the practice that such messages are always sent in closed envelope received a rude shock when Murty spoke about the prevailing practice, and this explains the exasperation to which the lawyers for the civil authorities were driven which may account for the unseamly attack against Mr. Bakhle, the Senior Advocate of the Commission, to which a reference has already been made. I may cite Shaikh Hussain Raj Amar Gol's answers given at the cost of repetition, which are as follows :—

“ Some time before midnight, a messenger came to me with an envelope. The messenger did tell me that the message was important and that it must be delivered immediately... I admit that one person was sleeping in the Council Hall at the time when the messenger brought the urgent message. That man was an inmate in one of the chawls in the compound. I do not remember his name.”

(Quotation is not continuous).

It would thus be seen that the evidence of Karle is corroborated not only by the evidence of Capt. Murty on all important points but also by the admissions given by Shaikh Hussain Raj Amar Gol himself. The attack launched upon Karle in the arguments advanced on behalf of the civil authorities is evidently due to their sense of exasperation. The most important admission that has been given by Shaikh Hussain Amar Gol is that the message was in a closed envelope and it was that envelope which was handed over to him by the despatch rider.

Shaikh Hussain Raj Amar Gol having made the above damaging admission tried to retrieve the position by making certain statements with a view to support the case put forward on behalf of the civil authorities. The first such statement is :—

“ I told him that if the message was urgent and must be delivered immediately then he should go to the Commissioner's house and hand it over to him.”

Had there been any substance in this assertion of Shaikh Hussain Amar Gol, there is no reason why the despatch rider should not go to the house of Mohite which could have been approached by him within two minutes.

It is of course Karle's case that he asked the watchman as to where the bungalow of Mohite was situated and the watchman told him that it was part of his duty to deliver the message and he would do it immediately. According to Karle, that is why he did not go to the Commissioner's residence. Shaikh Hussain Raj Amar Gol's evidence is somewhat contradictory. At one stage he denied that Karle told him that he did not know the Commissioner's address. At another stage he said that he had given the address of the Commissioner's residence to Karle. Whatever that may be, it is difficult to understand Karle's behaviour in not going to the Commissioner's house and instead handing over the message to Shaikh Hussain Raj Amar Gol when he knew that the message was urgent and when he was anxious to deliver the message to the Commissioner himself. He must have refrained from going to the Commissioner's house because of the assurance conveyed to him by Shaikh Hussain Raj Amar Gol. There is no other rational explanation for Karle's conduct. There is no reason why Karle should tell a lie when he said that he did not go to the Commissioner's house because Amar Gol assured him that he himself would deliver the message. He has no interest in this case. On the contrary, Shaikh Hussain Raj Amar Gol is a retired peon from the Revenue Department and has been re-employed by the Commissioner as a watchman. His continuance in service entirely depends upon the sweet-will of the Commissioner. Evidently, therefore, he is interested in supporting the Commissioner's case on vital points.

It is argued that when Shaikh Hussain Raj Amar Gol could not leave the Council Hall, how is that he would assure that he would deliver the message to the Divisional Commissioner? There are two possible answers to this question. One is that some clerks and, in all probability, the team included Rajput, head clerk, must have been seated in the Commissioner's office which is on the first floor to receive messages and to convey them to the Commissioner. It should not be difficult for Shaikh Amar Gol to go to the first floor to deliver the message to Rajput or other clerks. Secondly, Shaikh Hussain Raj probably expected that his friend who was sleeping by his side could be either asked to deliver message to Rajput, whether in the office or in his house. According to me, the first alternative viz. that a team of clerks was kept in the Commissioner's office is more probable in view of what has been stated above and also in view of the endorsement made by Rajput in the margin of Ex. 96, to which a reference would be made hereafter. This aspect will be dealt with, in all its implications, at a later stage.

The inference about making arrangement for receiving urgent messages during night time in the Council Hall is reinforced by certain admissions made by B. G. Rajput, the head clerk, Ex. 817, and G. G. Joshi, the Assistant Commissioner, Ex. 819. Rajput in answers to questions by Mr. Rege, the Commission's Counsel says :

"Even if the night watchman is told by the delivery messenger that the letter is urgent and must go to the addressee immediately, he cannot leave the Council Hall for the purpose of delivering the message. He must

hand it over next morning to the tapal peon. There are no written instructions on this point. The particular instruction, viz. that even when the letter is said to be urgent, the night watchman cannot leave the Council Hall, is an oral instruction. There are no written orders in that respect. I have not given the said instructions. I do not know who has given such instructions. Hussain Raj Amar Gol, the night watchman, himself told me that he had such instructions. He did not tell me from whom he received the instructions. He had told me this when I took over my charge as head clerk to the Divisional Commissioner. No arrangement is made in the Commissioner's office for delivering urgent tapal to the Commissioner received during night time. Urgent tapal remains on my table till I take it over at 11 a.m. on my arrival. No complaint has so far been made about the urgent messages sent by night time by any one."

G. G. Joshi's evidence on this point would well be reproduced in the form of questions and answers to show that there is no person appointed to assist the night watchman for delivering urgent messages to the Commissioner at the residence of the Divisional Commissioner.

"Q. Do you consider this arrangement to be satisfactory ?

A. It has worked well so far.

Q. Do you not think that by following this procedure, you are virtually converting urgent messages into ordinary ?

A. We are not converting the urgent messages into ordinary ones by asking the messenger to go to the Commissioner's house.

Q. It is pointed out to you that it is possible that the messenger has just been instructed by his office to go and deliver the message in the Commissioner's office and when your watchman tells him that he should go to the Commissioner's residence and deliver the message personally, he points out that that was not his job. In that case, is it not clear that your arrangement breaks down or in any case does not work satisfactorily ?

A. No alternative arrangement is made. The watchman cannot leave the building of the Council Hall under any circumstances."

Rajput was asked questions by the Commission's Counsel and he said that no arrangement is made for the despatch of a message which is urgent or very urgent and it is allowed to lie idle till the opening by the office on the next day. At the same time he added that there may be special instructions and arrangements for departing from the usual practice. When he was asked to say, 'what he meant by special instruction and arrangements' and under what circumstances such instructions are issued and arrangements are made, he replied :

"There are no precedents so far as I know of the issue of such special instructions."

Rajput having made the admission that under special circumstances special arrangement may be made, tried to beat a hasty retreat by saying that so far



as he knew there are no precedents for the issue of any special instructions in this matter. It is, therefore, quite likely that special arrangements were made on that night for the receipt of messages. What was that arrangement cannot be postulated. The arrangement may be that a batch of clerks was kept in the Commissioner's office or it may be that the message was to be despatched to Rajput first by a special messenger. This aspect of the argument will be further elaborated at a later stage of the discussion.

Let me now consider the other evidence relating to the question whether the message was contained in an envelope. Rajput says :

"I had not seen any open tapal addressed to the Commissioner prior to the receipt of Ex. 96A (The original of Ex. 96). It did not strike me, as unusual that a communication like this would come as an open letter. The message was on a full sheet of paper. Ex. 96A was lying on my table with folds. It was folded to a  $\frac{1}{4}$ th size of the sheet. As far as I remember, there was no vertical fold.

Q. You see the document and tell the Commission whether it has also a vertical fold ?

A. There does appear to be a vertical fold.

Q. Did you ask the tapal peon whether the message was received in a covered envelope ?

A. I did not ask him so. The letter was folded in a simple manner. I did not ask Amar Gol when he came to the office at 5 p.m. whether the message was in a covered envelope. As I was in charge of only 10 days prior to the incident, I had no opportunity to see any letter from the military authorities prior to this letter. I am in a position to produce some messages which were either received as open letters though addressed to S. P. Mohite in his name. The message contained in the letter Ex. 96A was an important message and also an urgent one."

Part of the cross-examination was directed to show the improbability that such important messages could not be contained in open sheets. This cross-examination, in a sense, is superfluous in view of Shaikh Hussein Amar Gol's admission that the message was contained in an envelope. Rajput did not fulfil his boast when he stated that he was in a position to produce messages which were received as open letters though addressed to Mohite in his name. The circumstance that the paper is folded bothways is a further indication that it must have been put in an envelope. Questions were also asked to Rajput as to whether the letter, Ex. 96, contained confidential information and whether it was possible that such information would be despatched in open letter. Rajput admitted that the information was confidential between the two officers. When he was asked to say whether he would expect such an important and urgent letter containing confidential information would be sent as open Tapal, his reply was :

"I only say that it was received so."

These answers clearly corroborate Shaikh Hussain Amar Gol's admission that what was delivered to him was an envelope if any corroboration is necessary on a point like this.

A good deal of argument has been advanced as to whether the message was contained in an envelope or not. Karle's statement that the message was contained in an envelope was challenged in cross-examination by Mr. Murudkar. Karle explained: "All important despatches with outsiders are in covered packets. Only messages that pass between our office and signal centre are on open chits. All despatches sent out from our office to persons outside the signal office are in covered packets." Capt. Murty, who was examined after Karle, was not asked any question about the practice spoken to by Gangaram Karle. It is significant that similar practice regarding despatch of messages prevails in the Police Department, as will be clear from the following passage at page 179 of the Bombay Police Manual Vol. III :—

"Messages addressed to the police officers will simply be folded and the name of the addressee written on the folded message form. Messages addressed to officers outside the Police Department should be sent in old envelopes with utility labels."

It may be noted that the address of Mohite is not written on the message itself, which is a further indication that the message must have been contained in an envelope. In the present case, the position is put beyond the pale of controversy by the admission of Hussain Raj Amar Gol when he said that what was handed over to him was an envelope.

Assuming that the message came in an envelope; several questions would fall to be considered. The first is in whose hands this envelope fell. The second is who opened it. The third is if it is opened by Rajput, where would he put his initials or where he would make his endorsement. The fourth is, supposing it is received by Mohite, where would he put his initials or endorsement. Rajput (Ex. 817) says :

"When an envelope is received in office which is addressed to the Commissioner in his personal name, it is not opened in the office. It is forwarded to the Assistant Commissioner. The Assistant Commissioner opens it. If the envelope is not addressed to the Commissioner in his personal name, it is opened by the office. It is not the practice to put the initials of the officer on the envelope when the envelope is opened. The initials are put on the letter itself. It is not the practice to preserve the envelopes. The envelopes are either used for other purposes or are destroyed."

At a later stage Rajput says :

"The practice is that if the Divisional Commissioner Mohite himself opens the envelope, then he will put his initials on the open letter, in which case it is not necessary for me to put my initials when that letter comes to me."

Joshi, the Assistant Commissioner (Ex. 819), has contradicted Rajput on some of these points. Joshi says :

"It is not my practice to put the date or the time of having received the document. I merely put my initials. I am entitled to open all the envelopes, whether they are addressed to the Commissioner in his personal name or whether they are marked secret. I am not, however, entitled to open such letters which contain an endorsement to the effect that it is

not to be opened by any one except the addressee. I put my initials on the body of the letter in token of having opened the envelope and below the same I put the date. If the envelope is opened by the head clerk, I put my initials without the date. When the Commissioner opens envelopes, he puts his initials and the date on the envelope."

When asked to state whether both the letters and the envelope would go back to him if the envelope is opened by Mohite, Rajput stated that in that case only the letter would go to him and not the envelope. In view of the contradictory evidence, it is difficult to gather what is exactly the practice prevailing in the Commissioner's office. The Commissioner says :

"If it was sent in an envelope and the envelope contained my address, it could have been opened by my office. I cannot say what is the practice prevailing in my office and whether the person receiving the envelope in my office would put the time of receipt on the envelope and initials on the envelope."

At any rate, Mohite does not support the statement of Rajput when he says that the only person who is entitled to open an envelope when it is addressed to the Commissioner in his name is the Assistant Commissioner and not the head clerk. Mohite generally says that the envelope could be opened by the office. The arguments advanced by the Commission's Counsel as also by Mr. Murudkar are based on the assumption that what Rajput and Joshi have said about the practice prevailing in the office relating to the opening of an envelope addressed in the name of the Commissioner is gospel truth. I am inclined to the view that these two officers who were examined long after Mohite was examined have tried to make a distinction between ordinary envelopes and envelopes addressed to the Commissioner in his personal name. No such distinction was present to the mind of Mohite himself. The distinction has been made with a view to explain away the admission given by Shaikh Hussain Raj Amar Gol viz., that the message came in an envelope and also to explain away the fact that they bear the initials of Rajput on the letter itself. Rajput's initials on the letter clearly suggest that the envelope must have been opened by Rajput. (I am proceeding on the footing that the message came in an envelope relying on the evidence of Shaikh Hussain Raj Amar Gol himself). Let us see what anomalous consequences result from the evidence of Rajput and Joshi once it is established that the message came in an envelope. The envelope would lie on the table of Rajput till his arrival in the office. Seeing that the envelope is addressed to Mohite in his personal name, Rajput would not open it. It will then go to Joshi, the Assistant Commissioner. Joshi will open that envelope, put his initials and date in the body of the message. If that is so, then is it possible that Rajput would make an endorsement and put his initials thereon? Does it not contradict the evidence of both Rajput and Joshi when they say that it was Rajput who received it first and made the endorsement and later on passed it to Joshi? We are, therefore, driven to the conclusion that the message was contained in an envelope, that the envelope was received by Rajput on that night, that it was opened by him, that he made endorsement 'Immediate please' on that very night and, in all probability, passed it on to the Divisional Commissioner. It is evident that the statement

of Rajput viz. that he received the message as open Tapal is false.\* Rajput has admitted that only the letter would go to him and not the envelope, in case, the envelope is opened by Mohite. Of course, this answer was given to a question which presupposed that Mohite opened the envelope. That pre-supposition is neither here nor there. It appears to me that Rajput after opening the envelope and after putting the initials sent the letter as also the envelope to the Divisional Commissioner and then what was sent back by the Divisional Commissioner and was received by Rajput was only the open letter. No explanation whatsoever has been attempted as to what happened to the envelope. It was the 'bounden duty'—to use the expression which has been used by the Commission's Counsel—of those who are in the know of things or who ought to be in the know of things, to explain as to what happened to the envelope, because, as repeatedly pointed out, it is not merely Karle who stated that the message was contained in the envelope, but it was Shaikh Hussain Raj Amar Gol who stated that he received the envelope from the messenger.

That takes me to the vital endorsement on the margin of Ex. 96. The endorsement is as follows:—

“Immediate please,  
11-30 A.M.  
Signature,  
12-7,  
Signature.”

Rajput says that except the last initials as against the figures 12-7 (which are of G. G. Joshi) all the other writings have been made by him. He further says that below the time '11-30 a.m.' and above the date '12-7' he has put his initials. *Prime facie*, there is a re-writing in both the figures '11' in '11-30'. Similarly the figures '3' and '0' also appear to have been written in thick ink. The letters 'a.m.' are also written in thick ink and appear to indicate that 'p' has been turned into 'a'. These circumstances aroused the suspicion of the Commission at a very early stage of the enquiry. During the evidence of Brig. Bedi when the attention of the Commission was first attracted to this endorsement, the Commission called the Advocate Mr. Ghaswala and Mr. Rege to the dias and showed them the peculiarities in the writings. It is idle to suggest that the figures '11' and '30' and the letter 'a' do not show any signs of alteration or rewriting. The alterations and rewritings are clear even to a naked eye, and the question is whether these alterations or rewritings are natural or deliberate. I put the position very clearly before the Counsel and the Advocates at the time when I showed the peculiar features and told them that the matter required further investigation. The Commission's Counsel, in an unusually virulent language, has pointed out that the Commission has proceeded investigation into this matter with suspicion and suggested that this was not proper. He has proceeded to give a long homily by citing authorities from the Privy Council and the Supreme Court judgments saying that the distinction between suspicion and proof must always be kept in mind and suspicion can never take the place of proof. These are propositions which are known even to a tyro in law and do not require any lengthy elaboration nor citation of authorities in their support. As

regards the criticism that the Commission has proceeded with the investigation on the basis of suspicion, it may be pointed out that every enquiry, whether scientific or otherwise, begins in doubt. If there is no doubt, there is no scope for enquiry and no possibility of advancement in knowledge. If there is no doubt and if the Commission is to take things on trust, then there is no need for enquiry at all and the Government might as well have not appointed a Commission of Inquiry. Of course, a Counsel is entitled to criticise the Commission if the Commission proceeds to deliver its verdict merely on the basis of suspicion. But to say that investigation should not be made on the basis of suspicion, is to say that there should be no investigation and no enquiry.

I have already pointed out that even a glance at the figures '1' and '1' in '11', '3' and '0' in '30' (11-30) and the letter 'a' in 'a.m.' with a naked eye shows signs of rewriting and alterations and this fact was brought to the notice of the Counsel and the Advocate at a very early stage of the inquiry, viz. during the evidence of Brig. Bedi. Before proceeding further it was necessary for the Commission to ascertain certain facts regarding the authorship of the endorsement in the margin at Ex. 96. Questions were asked first to Mohite on this point and this is what Mohite stated :

"The words 'immediate please' put in the endorsement are in the hand-writing of Mr. Rajput, the head clerk. I cannot say in whose hand-writing the figures '11-30 a.m.' are made. The initial below '11-30' and letters 'a.m.' are made by Rajput, head clerk. Below that figure, '12-7' is put. I cannot say in whose hand-writing these figures are written. The initials opposite the figure '12/7' are made by my Assistant Commissioner Shri G. G. Joshi. The endorsement 'immediate please' means that the message should be shown to the addressee, i.e. myself, immediately.

Q. Do you see any alteration in the figure '11-30' and the letters 'a.m.' or do you notice that the two figures in '11' i.e. '1' and '1' have been rewritten?

A. I cannot say whether it is so. The figure '30' in '11-30' is not very distinct.

Q. Do you notice that the word 'a.m.' is rewritten?

A. I cannot say whether it is rewritten, but I can say that it is not distinct.

Q. Supposing, originally, the figures and letters were to read as '1-30 a.m.' that will be consistent with the date put, namely 12-7?

A. That is correct.

Q. Do you not think that the two figures 1, 1 in 11-30 are differently drawn?

A. The first '1' is in one line and the second '1' is in two lines. The first '1' is more thick and also longer. The two lines in second '1' are short and thin.

Q. This message which emanated at 11-40 from Kirkee could have been received by you or by your office at or before 1-30 a.m. Do you agree with this?

A. It would have been physically possible.

I cannot say whether the messenger went to my house and, not finding me there, came to the office. That is not likely, because there is a peon in my bungalow. I was sleeping in my bungalow between 11-40 p.m. and 1-30 a.m. I had not instructed my office that if any second sitrep was received, it should immediately be despatched to me at my house.

Q. Please have a look at the document, and in particular, the folds and tell me whether it is likely to have been sent in an envelope?

A. I see the folds, but I cannot say whether this document was sent in the envelope.

Q. Supposing that this was sent in an envelope and the envelope contained your address, could it have been opened by any person?

A. It could have been opened by my office. I cannot say what is the practice prevailing in my office and whether the person receiving the envelope in my office would put the time of receipt of the envelope and initials on the envelope."

Questions were asked by the Commission with the object first of all of establishing the authorship of the endorsement Ex. 95A and also to ascertain Mohite's opinion about the peculiar look presented by the figures and letters in a part of the endorsement viz. "11-30 a.m." It is from Mohite's evidence that the Commission came to know that the author of the endorsement was Rajput. Of course, Mohite has been unable to say whether the figures '11-30' and '12/7' are in Rajput's hand-writing. He has identified the hand-writing of Rajput so far as the remaining part of the endorsement is concerned. He has also identified the hand-writing of G. G. Joshi so far as the initials opposite the figures '12/7' are concerned. Another thing which emerged from the evidence of Mohite is that certain figures were indistinct and certain other figures presented a very peculiar appearance. Mohite admitted that the figure '30' in '11-30' is not very distinct. He also admitted that the letter 'a' was not distinct although he was unable to say whether it was re-written. He also admitted that the figure first '1' in '11' (11-30) is in one line and the second '1' is in two lines. He also admitted that the figure first '1' is more thick and is also longer and the two lines in the figure second '1' are short and thin. These were undoubtedly very important admissions, and it is idle for the Commission's Counsel to suggest that in spite of these admissions about the very strange features of the writings of the figures and letter 'a', the Commission should not proceed with an enquiry into the matter. It is still more strange that the Commission's Counsel should criticise the Commission by saying that the Commission was inspired by suspicion when it probed deep into this matter.

Let us now turn to the admissions of Rajput, the head clerk. He stated :

“The endorsement in the margin is in my hand-writing. It reads : ‘Immediate please’, below that ‘11-30 a.m.’, below that I have put my initials, and below that I have put the date ‘12/7’. In the second figure of figure ‘11’, there are two lines drawn. The first figure does not appear to me to be in thick line.

*To the Commission—*

Q. Your attention is invited to the letters ‘a.m.’ Does not the letter ‘a’ appear to have been re-written ?

A. It is not re-written. I was writing with a pen holder and when there was short ink, I wrote the letters ‘a.m.’

Q. Did you not find anything unusual in the same ?

A. I agree that the letter ‘a’ is rather dark.

Q. See the letter ‘a’ again. Don’t you see a line in thick ink behind the letter ‘a’ ?

A. I do not see any line at all.

Q. Have a look at figure ‘30’ and see whether that is written in thick ink ?

A. Yes, sir.

Q. See the figure ‘30’ carefully and tell the Commission whether it appears to have been squeezed in a narrow space ?

A. Yes, it does look like that.

Q. Was this figure written later on ?

A. No.

Q. Does it appear from the present letter ‘a’ that originally ‘p’ was written and has been turned into ‘a’ ?

A. I deny the suggestion put to me.

Q. Would it be like this, Mr. Rajput, that originally what was written was ‘1 a.m.’ on the 12th, and was attempted to be turned into ‘11-30 a.m.’ ?

A. No. That is not correct.”

It is clear from Rajput’s evidence that Rajput is the author of the entire endorsement including the figures and letters ‘11-30 a.m.’ and ‘12/7’. It would be recalled that Mohite was unable to identify the hand-writing of the figures and letters ‘11-30 a.m.’ and figures ‘12/7’, and it is only after Rajput’s evidence that the authorship of the entire endorsement was traced to Rajput, barring, of course, the initials of G. G. Joshi made opposite the figure ‘12/7’. The admissions of Rajput may be summed up as follows :—

(1) He agreed that the letter ‘a’ in ‘a.m.’ was rather dark. He denied the suggestion that this was re-written. He also denied that there was any line in thick ink behind the letter ‘a’. He also denied that the original letter ‘p’ was converted into ‘a’.

(2) He also admitted that the figure '30' was written in thick ink.

(3) He also admitted that the figure '30' has been squeezed in a narrow space. He, however, denied that the figure '30' was written later on. The admissions given by Rajput were again very significant. The Commission's Counsel has vehemently argued that the Commission was wrong in putting the suggestion to Rajput, asking him whether 'p' was turned into 'a' in what now looks as '11-30 a.m.'.

In the first place, the Commission asked the question on this point from the appearance of the figure as seen even without the aid of a magnifying glass. At that time the Commission had no particular theory of its own. It was merely exploring the various possibilities and wanted to ascertain the truth of the matter. Strangely enough, the Commission's Counsel has argued that this suggestion is contradictory to the entire theory of fabrication, because if the figure '1' '1-10' or '1-30' are written, then necessarily that would go into the next date i.e., 12th, and the time would necessarily be 'a.m.' and not 'p.m.'. The Commission did put a suggestion to Rajput himself asking him whether '1 a.m.' was attempted to be turned into '11-30 a.m.' In the same way, the hand-writing expert Mr. Phansalkar, to whose evidence I will refer presently, also suggested that the original figure must be '1-10 a.m.' and that has been turned into '11-30 a.m.'. The Commission was exploring all possible theories. If the Commission's Counsel had given some thought to the matter, he would have realised the futility of the argument that the suggestions were contradictory. Let us take two possibilities into account and consider the logical consequences arising therefrom. Let us first assume that the endorsement was being written by Rajput really at 11-30 a.m. on the 12th. In that case, is it possible that the writer would write 'p.m.' instead of 'a.m.' even by mistake or slip of pen? 11-30 is the normal time of working in the office. Every one is accustomed to write that time. Every one is fresh at that moment. It is impossible to imagine that if Rajput were to write the endorsement at 11-30 a.m. on the 12th, he would write it as 11-30 p.m. in the first place and then try to turn it into 11-30 a.m. There is no possibility of any such mistake being committed by Rajput at all. On the other hand, take the other possibility: Rajput is writing the endorsement either at 1 a.m. or 1-10 a.m. or 1-30 a.m. on the 12th. That is an odd hour of the night, when ordinarily people do not work. There is always a possibility of the writer putting the time as 'p.m.' instead of the correct 'a.m.'. In this connection, I may refer to Dandavate's evidence and his jottings at Ex. 831. Dandavate wrote 1 p.m. which is the last but one entry on the right side in Ex. 831 which mentions the level of water at 67.50. According to him, the entries of the 11th were written on the right hand side of the paper and entries of the 12th were written on the left hand side of the paper. In the ordinary course, this entry would come under the date 12th July 1961. Dandavate says that through mistake he put the time as 1 p.m. as he was writing it at an odd hour. This explanation offered by Dandavate is not only plausible but appears to be satisfactory. By sheer habit, instead of 1 a.m. any one would write 1 p.m. and then after realising the mistake that p.m. was wrong, he would correct it and turn it into a.m. In my view, the same mistake appears to have been committed first by Rajput and instead of writing 'a.m.', he



wrote 'p.m.'. Of course, he does not admit that 'p' has been turned into 'a'. But any one who sees the letter carefully and particularly with the aid of a magnifying glass would be convinced that the original letter was 'p' and that the same has been turned into 'a'. It is equally possible that one may put down the date as 11 when one makes the entry at an odd hour. The time '11-30 p.m.' or '1 p.m.' or '1-10 p.m.' or '1-30 p.m.'" is in no way consistent with the case of the civil authorities, then how is it that Rajput wrote 'p.m.' in the first instance after the figure, whatever that may be. It is ridiculous on the part of the Commission's Counsel to suggest that the question that was asked by the Commission as to whether 'p' was turned into 'a' is contradictory to the entire theory of fabrication. This argument merely shows that Mr. Rege has not given serious thought to the question. Secondly, it is necessary to remember that the Commission had no theory of its own and till the end the Commission was exploring various possibilities. It was only Phansalkar who put forward a definite theory. I will consider how far that theory is valid in the circumstances of the case a little later.

Before that, I will dispose of another argument which has been very vehemently advanced by the Commission's Counsel viz., that definite suggestions should have been put to Mohite as also to Rajput as to the case of fabrication. This argument is again based on a misconception. Neither Mohite nor Rajput was on a trial for an offence of forgery, nor was he being civilly sued in tort in a Court of law. The Commission was investigating into certain facts at the end of which it would record its findings on the facts referred to it. The Commission had no case of its own, had no theory of its own. It had not levied and could not levy any charge against any one. The Commission, of course, is entitled to record censorial findings on the basis of the evidence adduced before it and the circumstances elicited in the case and the probabilities. That being the case, it was enough for the Commission to see whether any alterations had been made in the endorsement and, in particular, in the figures and letters '11-30 a.m.' (as they appear today). Once that was established, then the only question that remained for the Commission to decide was: whether the alteration is made in the ordinary course of events or has been made deliberately and intentionally. The enquiry was being pursued from that point of view. The matter was referred to the hand-writing expert for finding an answer to this question. Once the Commission is satisfied that the original entry was either '1 a.m.' or '1-10 a.m.' or '1-30 a.m.', it is not necessary for the Commission to stick to any particular figure, nor is it possible for it to do so. It is for Rajput or Mohite, whoever wants to rely upon that document to explain how this mistake came to be committed. The Commission had never excluded the possibility that the alteration could be natural. But it is for the party who asserts that the alteration is natural to satisfy the Commission about its genuineness. Has any satisfactory answer been given to the queries made by the Commission on this point? How is it that 'p.m.' came to be written at all if the entry was being made at 11-30 a.m. on the 12th? On the other hand, there is every possibility of 'p.m.' being written through mistake when the entry

was being made either at 1 or 1-10 or 1-30 a.m. Equally there is a possibility of the date '11' being put instead of 12/7. Phansalkar has pointed out that the original figure '1' in the figure '12/7' has been converted into '2'. This mistake is also natural. Has any satisfactory explanation been offered as to why the two figures '1', '1' in '11' present such odd appearance? Why should the first figure '1' be written not only in thick ink but lengthened upwards to an abnormal extent? One has to compare this '1' with '1' in '12/7'. Further it is necessary to note that no satisfactory explanation has been given for the writing of two lines in the second '1' in '11'. Again Rajput has not offered any explanation as to why '30' has to be squeezed in a narrow space.

The most important circumstance in this case is the endorsement 'immediate please'. I am assuming that this endorsement was made by Rajput himself and that is exactly what Rajput, Mohite and Joshi have said. The Commission's Counsel has argued that unless it is established that the words 'Immediate please' are written by Mohite, the endorsement cannot be regarded as a fabrication. This is a fantastic argument and has only to be stated to be refuted. At no time the Commission suggested that these words or any part of the endorsement is in the hand-writing of Mohite. Pages after pages have been devoted by the Commission's Counsel in pointing out that it has not been established, nor has it been suggested that the endorsement is in the hand-writing of Mohite. It is nobody's case that it has been in Mohite's hand-writing. It appears that the Commission's Counsel's suggestion is that if the envelope was opened by Mohite, then the endorsement in the margin of Ex. 96 would perhaps be in his hand-writing. Who must have opened the envelope is a question which has to be considered independently and I will put forward my own hypothesis in that respect. For the time being, I assume that the endorsement is in the hand-writing of Rajput. This presupposes that Rajput was the first to have a look at this document Ex. 96. I have already pointed out that on the admission made by Shaikh Hussain Raj Amar Gol, the message was contained in an envelope. If that is so, it follows that the envelope must have been opened by Rajput himself. After opening the envelope Rajput made the endorsement 'Immediate please'. I will now consider the consequences of this endorsement. Here again I will assume two possibilities. The first is that this endorsement, 'Immediate please' was made by Rajput at 11-30 a.m. on the 12th and the second that it was made either at 1 a.m., 1-10 a.m. or 1-30 a.m. on the 12th. If the endorsement is made at 11-30 a.m. on the 12th, would Rajput write the words 'Immediate please'. It is necessary to remember that the dam had breached in the early hours of the morning of the 12th. Several streets of Poona were submerged in flood waters. The water was still increasing. Mohite at that time was in Bombay. In these circumstances, could there be any action that could be contemplated in respect of the message at Ex. 96? There was nothing to be done and the endorsement 'Immediate please' would be absolutely meaningless. On the other hand, take the second possibility viz., that the endorsement was being written some time at 1 or 1-10 or 1-30 a.m. on the 12th, that is to say, soon after the

envelope was received in the Council Hall. As I have pointed out in the course of the above discussion the message contained very grave and serious news about the condition of the dam. Undoubtedly, it was an important message and to use the words of G. G. Joshi, Assistant Commissioner, "it is unfortunate that this message was not received by Mohite". Now if Rajput were to read this message, he would be struck by the gravity of the situation and would, therefore, desire that the message should fall in the hands of Mohite immediately, so that necessary action would be taken in that matter. It is only in these circumstances that the endorsement 'Immediate please' would acquire meaning and significance. This most important circumstance, which clinches the issue and clearly indicates that the date and the time of the making of this endorsement have been deliberately and intentionally changed, has been ignored by the lawyer on behalf of the civil authorities. The Commission's Counsel, however, has proceeded to offer his own explanation with regard to this endorsement 'Immediate please'. The explanation may be put in the language used by the Commission's Counsel in his written arguments :

"Again the word 'immediate' would not suggest anything to any person for whom that remark might have been meant. The message itself does not require Mohite to do any thing. It would be absurd then to suggest that this remark 'Immediate please' must have been made by him. Mohite is not asked any question on this point. But if we take the evidence of Rajput, it is but natural that he should write the remark to enable Joshi, the Assistant Commissioner, to contact Mohite in Bombay. Joshi in fact acted on this immediately by telephoning to Salvi in Bombay."

A specific question was asked to Mr. Mohite by the Commission on this point. In the lengthy cross examination undertaken by the Commission, which has become an eye-sore not only to the lawyers on behalf of the civil authorities but to the Commission's Counsel himself, Mohite was asked to explain the meaning of the endorsement 'Immediate please' and this is the answer that he gave :

"The endorsement 'immediate please' means that the message should be shown to the addressee, i.e., myself immediately."

In spite of this clear question and answer, the Commission's Counsel in the passage cited above has the audacity to say that Mohite was not asked any question on this point. It is clear that the Commission's Counsel has not carefully read the record or having formed his own conclusions has decided to ignore whatever went against these conclusions. This along with other circumstances, which I will be presently pointing out, clearly shows that the Counsel has not cared to read the record carefully. Had the Commission's Counsel applied his mind to the above admission of Mohite, wherein he says that the endorsement meant that the message should be shown to himself immediately and tried to follow its implications, he would not have proceeded to give the imaginary explanation which

he has given in the last two sentences of the passage cited above. According to the Commission's Counsel, the endorsement did not indicate that Mohite should take any action, nor did it indicate that the message should be shown to Mohite immediately. Although Mohite himself admitted that the endorsement meant that the message should be shown to him immediately, Mr. Rege says : 'no, no ; it did not mean that but that it meant that Joshi, the Assistant Commissioner, should contact Mohite in Bombay and convey the message to him on telephone.' The Commission's Counsel has proceeded to add : "Joshi in fact acted on this immediately by telephoning to Salvi in Bombay".

In order to understand the perversity of the argument of the Commission's Counsel and the twisting of facts, on which it is based, it is necessary to refer to another message which is at Ex. 97 and Joshi's statements in respect of the same. Ex. 97 which is also a message from the Bombay Engineer Group, copy of which was addressed to Mohite, was initiated at 09-15 hrs. on the 12th and runs thus :

"Operation BAGALBHAGAT (.) dam badly breached at 120655(.) heavy flow through breach(.) no repeat no repair measures possible for present(.) troops standing by at the site for detailed plan as directed by Chief Engineer Irrigation Maharashtra State(.) alert all units about possibility of rise of river MULLA Mutha Copy by hand to :—

Shri S. P. MOHITE,  
Commissioner, Poona Division Poona."

Joshi states that this message went straight to his table and he put the time of receipt as 12-15 p.m. and made his initials in token of the receipt of the same. This document does not contain Rajput's initials. I will refer to the significance of the absence of Rajput's initials a little later. There is an endorsement in the margin made by Joshi which shows that P. G. Salvi was informed. It appears that Mohite was staying with P. G. Salvi at Bombay and the trunk message was given to P. G. Salvi, saying that the substance of the message should be informed to Mohite. There is no similar endorsement on Ex. 96, nor is it Joshi's case that he communicated the substance of Ex. 96 to P. G. Salvi on phone and yet the Commission's Counsel has the audacity to say :

"Joshi in fact acted on this immediately by telephoning to Salvi in Bombay."

Let us see if there is even the slightest justification for this jumbling at all, or whether this is a case of deliberate twisting on the part of the Commission's Counsel. In his written statement, Ex. 820, Joshi says :

"After some time (i.e. after Joshi put his initials in the margin of Ex. 96) one more copy of a wireless message was sent to me containing the information about the breach of the Panshet dam. This wireless message was also initialed by me after noting the date and time as usual. As the Commissioner was not at head-quarters, I immediately tried to contact him through Shri P. G. Salvi at Bombay address but he was not available on phone. Then I requested Shri Salvi to communi-

cate the message about the breach of Panshet dam to the Commissioner immediately as the matter was urgent and important.”

The sentences clearly show that what was communicated to Salvi for being passed on to Mohite was the message containing information about the breach of the dam (Ex. 97). There is not even a remote hint that the substance of Ex. 96 was communicated to Mohite. Turning to Joshi's deposition we find the following about the talk on the phone with P. G. Salvi of Bombay :

“Had Ex. 97 come through the head clerk, he would put his initials below. On trunk phone, I informed Mr. P. G. Salvi of Bombay to communicate *this message* to the Commissioner who was at Bombay on tour. I have made the endorsement to this effect below Ex. 97.”

The words ‘this message’ have clear reference to Ex. 97. From where has Mr. Rege gathered the information that Joshi in fact acted on the endorsement immediately, by telephoning to Salvi in Bombay? Such arguments are apt to mislead an unwary Judge. How is it that the Commission's Counsel came to make such a serious mis-statement on a crucial point? Either he did not have the patience to refer to the original endorsements on Exs. 96 and 97 and to the written statement and deposition of Joshi or he was determined to put forward any and every plea, whether based on facts or not, in his chivalrous attempt to defend Mohite. The endorsement ‘Immediate please’ is most crucial and affords the best circumstantial evidence to show that the endorsement was made on the night of the 11th, whatever the time. No less a person than Mohite has admitted that the endorsement ‘Immediate please’ was meant for him and suggested an action to be taken by him and yet the Commission's Counsel has the cheek to say :

“If we take the evidence of Rajput it is but natural that he should write the remark to enable Joshi, the Assistant Commissioner, to contact Mohite in Bombay.”

This is another piece of legerdemain. What is there in Rajput's evidence to show that he wrote that endorsement to enable Joshi, the Assistant Commissioner to contact Mohite in Bombay? There is no indication, even in a remote degree, in the evidence of Rajput that he wrote that remark with a view to enable Joshi to contact Mohite in Bombay. Does not the Commission's Counsel realise that his explanation clearly contradicts what Mohite himself admitted viz. that the endorsement meant that the message should be shown to himself? It is possible for me to point out scores of instances in the written arguments submitted by Mr. Rege, wherein half truths have been stated, facts have been twisted and evidence mis-quoted to suit inferences which he was bent upon drawing. If I were to embark upon exposing his fallacies, I will have to write a separate book on the same. I have cited the passage in this particular part of Mr. Rege's arguments and exposed the misstatements and deliberate twistings at some length, because this is, in my view, a very crucial and important point and if Mr. Rege's argument on this point collapses, there is no explanation whatsoever as to how it was possible that such endorsement ‘immediate please’ could be made by any one who got this message at 11-30 on the 12th.

Witnesses may lie but circumstances do not, and the strongest circumstance which corroborates the inference suggested by crucial re-writings and alterations in the figures and letters "11-30 a.m." is the endorsement 'Immediate please'. It is not necessary to go to the evidence of the hand-writing expert for drawing the inference that the endorsement was written on the night of the 11th and time and date were changed to show that it was done at 11-30 a.m. on the 12th. Although the Commission is not enquiring into any charge of fabrication against any one, still it will be necessary for the Commission to consider the question as to at whose instance, the fabrication was done, if the Commission finds that there is a fabrication. Fabrication presupposes an intentional or deliberate alteration. In that case, the important question will be, who was interested in making the alteration? It is quite legitimate to infer that the alterations in time and date must have been done at the instance of some one who was interested in making those alterations. On Rajput's own showing, the alterations were made by him, although he says that he made them immediately. It is not necessary to show that the writing was that of Mohite, nor is it anybody's case. We are proceeding on the footing that it is Rajput's writing and the question is if the time was altered by Rajput, why did he do so? If the object was to show that the message was received at 11-30 a.m. on the 12th and not on the night of the 11th then the clear inference is that Mohite was vitally interested in the alteration which was effected by Rajput. There was a furore raised as to why Mohite should depart for Bombay on the morning of the 12th when the dam was in critical condition. Not only that, it was an ironical coincidence that Mohite should depart for Bombay by the Deccan Queen at about the same time when the dam actually breached. It is no wonder that Mohite himself suffered from guilty conscience, at any rate, looking at it from hind side, for having left at a critical time in the history of the Panshet dam. Mohite was anxious to make out a case that he had not received the message at Ex. 96. Not only this, but he was anxious to show that he received the message in the morning from Prabhakar that the situation at Panshet had improved. I will deal with this aspect of the matter some time later.

(b) *Hand-writing expert's evidence*

Before doing so, I will proceed to deal with the evidence of the hand-writing expert which has been the subject matter of a particularly virulent attack not only at the hands of the lawyers of the civil authorities but also at the hands of Mr. Rege. After the evidence of W. M. Deshpande, the Stenographer to the Commissioner, was over and V. S. Dandavate was in the witness box, the Commission passed the following order (Ex. 833) :—

"In view of the condition of the endorsement in the margin of Ex. 96 and in view of the admissions made by Rajput in his evidence, the Commission deems it necessary to have enlarged photographs of different sizes of the said endorsement. The matter may, therefore, be referred to the Examiner of Questioned Documents who should be requested to submit the photographs to the Commission within as short a time as possible. The Examiner may be requested to bring the apparatus to the

Council Hall and take the photographs here only in the presence of the Assistant Secretary of the Commission.

Copy of this order be sent to the Examiner of the Questioned Documents and to the D. I. G. (C. I. D.), Bombay, for immediate action."

Accordingly, Mr. Phansalkar, the Examiner of Questioned Documents took enlarged photographs and submitted them to the Commission on 23rd July 1962. On the 24th of July, the Commission made a second order Ex. 839 :

"The Government Examiner of Questioned Documents has forwarded to the Commission enlarged photographs as per the directions given on the 20th of July. The directions did not specifically ask for the observations in regard to these writings. That may be the reason why observations have not been forwarded along with photographs. I hereby direct that the Examiner of the Questioned should send his *observations* to the Commission at an early date."

By the first order, the Commission called upon the Examiner of Questioned Documents to take enlarged photographs of different sizes of the endorsement Ex. 95A. By the second order, the Commission requested the Examiner to submit his observations in regard to the writing of the endorsement. The object of securing enlarged photographs was to see the condition in clearer relief of the figures and letters of the endorsement on Ex. 96 which appeared to have been altered or rewritten. As Osborn has observed at page 71 to the effect :

"That microscopic examination of documents affords testimony which does not clearly amount to a statement of opinion but a visible exhibition of facts which can be interpreted by the Court and the Jury."

On the same page, Osborn has observed :

"The fact as seen from an effective visible illustration cannot be successfully cross-examined ; it answers back in a universal language that needs no interpreter and verifies the old adage, 'Seeing is believing'."

These observations apply with greater force to photographic representations. The photographs that were presented to the Commission by the Examiner of Questioned Documents did make a revealing reading and confirmed the suspicion previously entertained that the figures and letters were re-written or altered. At the same time, the Commission felt that the observations made by the Examiner of Questioned Documents would be of some help to the Commission. That is why the Commission asked the Examiner to submit his observations to the Commission. Here it is necessary to remember that the object in calling for the photographs and the Examiner's observations was a limited one. The object was not to show whether the author of the writing was some one other than Rajput. The Commission proceeded on the footing that the writing including the re-writings and alterations were made by Rajput himself and by no other. The question to be investigated was : whether it was possible to read what was the original and what were the alterations though made by the same person. The problem, therefore, was not the usual problem that is presented to a hand-writing expert regarding the *authorship* of the impugned letters.

It is in this back-ground that we have to consider the observations made by Mr. Phansalkar, the Examiner of Questioned Documents and also the evidence given by him. In appreciating his evidence it is necessary to bear in mind that Phansalkar is attached to the State C. I. D. and is directly working under the D. I. G. (C. I. D.), Bombay. In the present enquiry, two important police officers i.e. Heble and Majeedullah are interested and both have appeared through the same lawyers. In these circumstances, it is difficult to imagine that Phansalkar would go out of his way to submit incorrect observations and perjure himself. Further, his experience in the department where he is working is vast. He is working as Chief Examiner for 7 years and during the course of his career as Examiner, he has examined 20,000 documents. His views, therefore, are entitled to great weight. The observations submitted by the Examiner are at Ex. 867. In the preamble, he has explained the nature of the enlargements. He points out that the enlargement was made to 10 times of the original and three different photographic enlargements were obtained :—

- (1) without the aid of a filter and indirect lighting,
- (2) by using the combination of two filters viz. blue and yellow in direct lighting, and
- (3) by using transmitted light.

At paragraph 2, the Examiner states that two points are revealed by the enlarged photographs. They are :

- (a) (1) A major portion of the first vertical line,
  - (2) The so-called figure 3,
  - (3) Dot or 'O' following the figure 3,
  - (4) Letter 'A', and
  - (5) A major portion of 'M' show distinct denser colouration than the rest of the writing.
- (b) The first vertical line shows the intense colouration in about 9/10th of its lower portion. The remaining portion at the top shows distinctly the faint colour.
- (c) The next double line is composed of two vertical lines meeting only at the top; both these show faint colour.
- (d) What is now appearing as figure '3' appears to have been made up of adding of different parts to an originally different figure, since this does not show natural pattern in any accepted modified form of the said figure, particularly the top slanting line, the junction portion in the middle part, the starting of the lower curve and also the slanting ending of this lower curve all show as separately added components.
- (e) The dot or O following 3 is only a heavy filling in of ink unlike a regular zero, whether hollow or otherwise.
- (f) The letter 'A' shows double writing, the dense colouration presenting mostly as letter 'A' is also associated with faint coloured curve at the beginning part thereof; the ending part of this 'A' also shows faint colour.



(g) About 2/3rds of the letter 'M' in its initial part shows denser colouration, while the remaining portion in the ending part is faint.

(h) The dot before figure 3 is in faint colour.

(i) The dots following the letters 'A' and 'M' are in denser colour."

It will be at once evident that these observations are summed up results of visual representations. *They do not amount to an expression of opinion.* Any one can see and verify the correctness of the observations made above. At paragraph 3, the Examiner has then set out the *inferences* which follow from the above observations. The inferences may be set out as follows :—

"The writing of time is not an original writing as '11-30 a.m.'. The original writing could possibly be read as '1-10 a.m.'"

He has given his reasons at sub-paragraph (a), (b), (c) and (d) in support of this view. With regard to the date '12/7' his observations are :

(a) The colour of figure '1' is much faint in the whole of this writing.

(b) The slanting line after '2' except in its near top portion shows similar dense colouration as in figure '7' with due variation thereof in the tapering portions of these both viz., the slanting line and figure 7.

(c) Figure '2', as it now appears, shows considerable dense colouration and also the near top portion of the slanting line following it.

(d) The curve of figure '2' does not show natural curvature

(e) The starting of the base line of figure '2' is at an unnatural part in this portion of the figure, i.e. the base line starts before the complete downward passage of the main curve part of figure '2'.

(f) The near top portion at the junction of figure '2' and slanting line following figure '2' shows heavy accumulation of ink. The small top portion above this part of this slanting line, however, does not show such denser colour and accumulation of ink."

On the basis of these observations, the Examiner has drawn the inference that the present writing of figure '2' of date '12/7' is not an original figure '2'. The original figure in this case can only be '1', thus reading the date as '11/7'. The Examiner has then added that "the portions of the document being time '11-30 a.m.' and date '12/7' were examined under stereoscopic microscope", and the observations, as noted down, were confirmed upon this examination.

I have appended photostat copies of the endorsements at this place so that the observations mentioned above could be verified and the discussion which is to follow can be fully comprehended and appreciated.

Before proceeding further, it is necessary to mention a few more facts. The enlarged photographs and the observations of the Examiner were exhibited and Mr. Murudkar was asked to state whether he wanted the Examiner for cross-examination. On the 27th of July, I asked Mr. Murudkar as to whether he wanted Mr. Phansalkar for cross-examination. Mr. Murudkar said that unless he consulted another expert, it would not be possible for him to say whether he wanted Phansalkar for his cross-examination. The Commission pointed out to Mr. Murudkar that it could not wait

indefinitely for Mr. Murudkar to get ready with the opinion of another expert for the purpose of cross-examining Mr. Phansalkar. It, therefore, fixed 2nd of August as the date for the cross-examination of Phansalkar. On 30th July 1962, Mr. Murudkar submitted an application stating *inter alia* :—

- (1) It was necessary that Phansalkar be examined and cross-examined.
- (2) Permission may be granted to have the photographs taken of the document Ex. 96 and the marginal endorsement thereon by 'our expert'.
- (3) The date for the cross-examination of Phansalkar, which was fixed as 2nd August 1962, should be adjourned (*vide* Ex. 873).

Thereupon the Commission passed an order on the same day acceding in substance to the request made by Advocate Murudkar. 8th of August was fixed as the date for the examination and cross-examination of Phansalkar, and Mr. Murudkar was directed to have enlarged photographs prepared by his expert before that date. By a further order on 31st July, 1962, Mr. Murudkar was directed that if he wanted to examine any expert, then the photographs taken by his expert and the observations made by him should be placed before the Commission at least one day before the expert was examined. On 6th August 1962, Mr. Murudkar put in an application (Ex. 899) stating that C. T. Bhanagey, Criminologist and Additional Government Examiner of Questioned Documents of Madhya Pradesh State be allowed to inspect and examine the endorsements on Ex. 96 and if necessary may be allowed to photograph them. The Commission passed an order below the same 'Allowed'. Phansalkar went into the witness box on 8th August 1962. Enlarged photographs taken by C. T. Bhanagey, if any, were not produced before the Commission, nor were observations produced. On that day, Mr. Murudkar made an application (Ex. 912) stating that he had no experience of hand-writing of questioned documents and that Bhanagey, who is an expert, may be allowed to cross-examine Phansalkar on behalf of his client. This request was turned down by the Commission. The Commission pointed out that Bhanagey had not produced alternative photographs, nor had he submitted his observations. After all, Bhanagey was a professional man and it was not proper that a professional man should be allowed to cross-examine another professional man, particularly when the former had not submitted his observations. If such cross-examination was allowed, then it would be open to one expert to ask all kinds of questions to the other expert, as no ethical obligation attaches to the professional expert. A lawyer is always expected to take an objective and detached view of the matter, his loyalty to his client notwithstanding. It was also pointed out that an Advocate can never be considered as incompetent in the matter of cross-examination, because several experts have been cross-examined very effectively by the Advocates. Bhanagey was, however, allowed to sit by the side of Mr. Murudkar, while the cross-examination was going on, and was allowed to suggest questions to Mr. Murudkar. He was also allowed to put one or two questions and was also allowed to make elucidation off and on. My object in detailing the above circumstances is to point out that not only no rival photographs have been produced before the Commission, but that the observations made by Phansalkar based on the photographic appearance of the document set out above in detail, have not been

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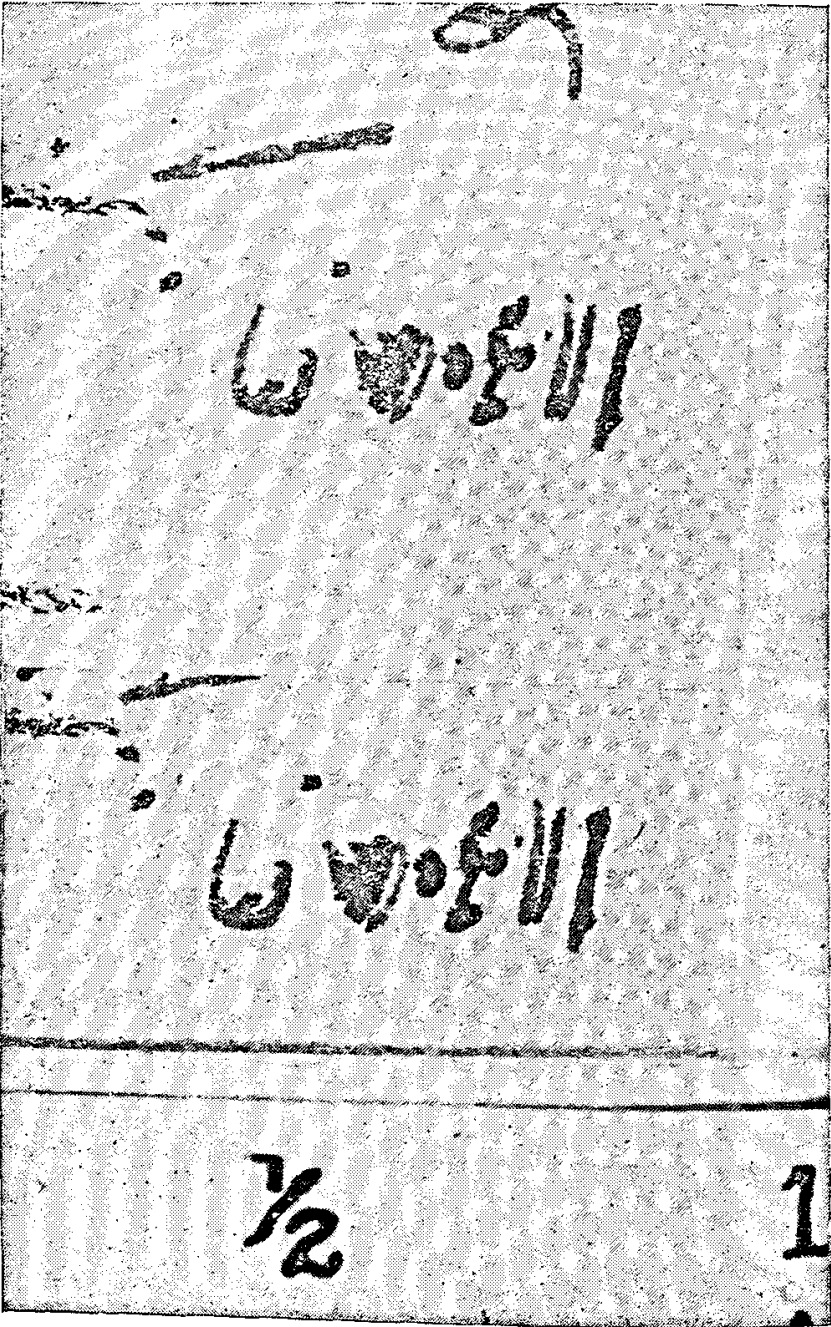
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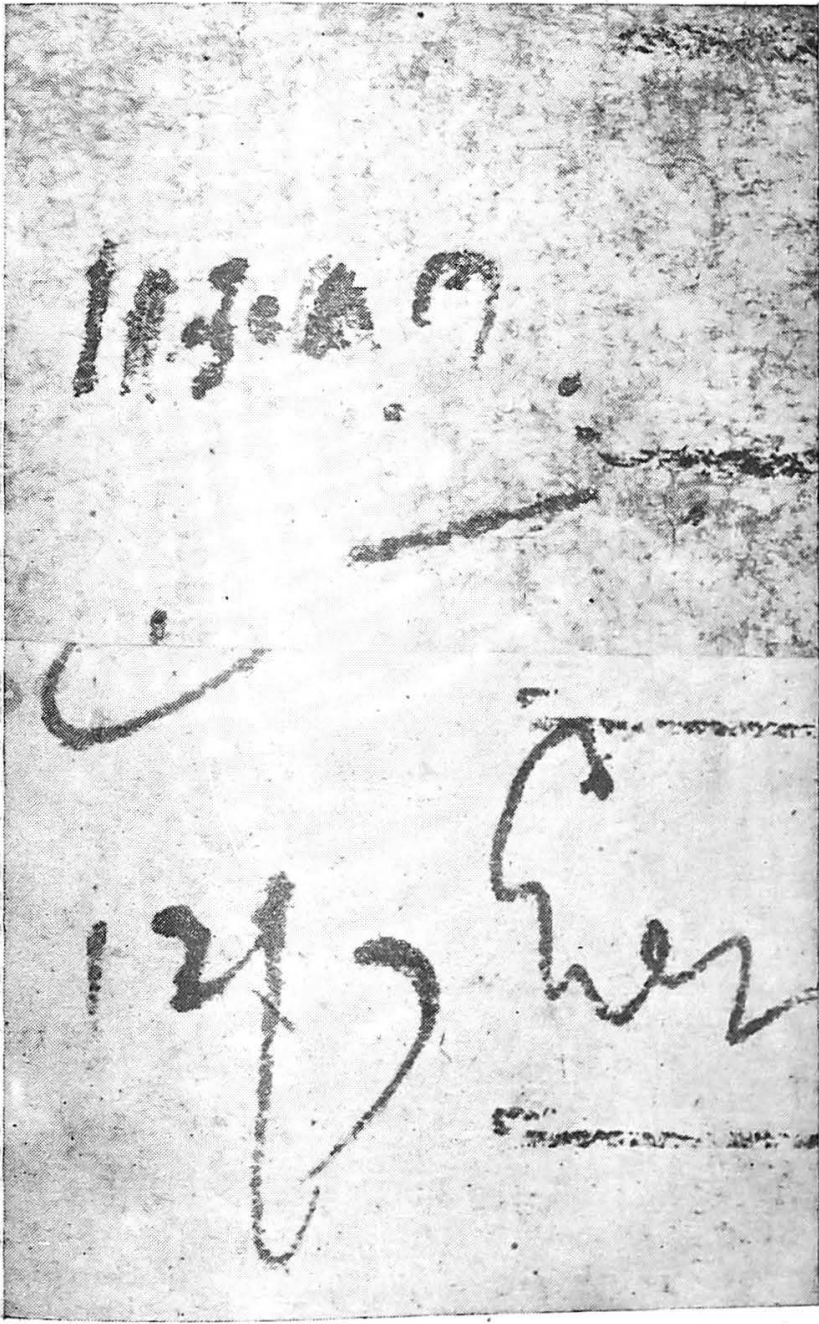


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Handwritten text in a non-Latin script, possibly Arabic or Persian.

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Ex 96

PRECEDENCE-ACTION	PRECEDENCE-INFO DEFERRED	DATE-TIME GROUP 21/2/62	MESSAGE INSTRUCTIONS PRIORITY
FROM BOMBAY SQUAD OF AIR SIGNALS		SECURITY CLASSIFICATION GR	
TO HQ POCMA, BOMBAY ( by hand)		SPECIAL INSTRUCTIONS	

INFO

HQ N AND G AREA  
HQ SOUTHERN COMMAND ( By hand)

Exh S. No. 95A  
Commission of Inquiry,  
Panhet and Khadikwasala Dam, Panha.  
Read and recorded on ( Original retained and copy exhibited.)  
SPECIAL INSTRUCTIONS  
Commission of Inquiry

operation BHALBHAGAT (.) sitrep No 3 (.) aifa (.) report on task follows (.) thirty feet section of west side of PARSEET earth dam subsided appreciably (.) crack at top caused leak (.) unusual rains have raised level of reservoir to point of danger of overtopping (.) civil labour at dam exhausted by two days continuous work to plug leak and raise subsided portion (.) brave (.) action by troops (.) sand bag wall being constructed to raise level of subsided portion (.) 8000 (2000) sand bags to be laid during night eleventh twelfth (.) estimate completion 0600 hrs twelfth (.) revetment of upstream face of dam to be done by day (.) all informed

Exh S. No. 96  
Commission of Inquiry,  
Panhet and Khadikwasala Dam, Panha.  
Read and recorded on ( Original retained and copy exhibited.)

Copy by hand to :-

Shri J P BHAGARZA,  
Commissioner, POCMA Division  
POCMA

21/2/62  
Commission of Inquiry

Pages	CLASSIFIED	NO	DATE	TIME	SYSTEM	OPERATOR	DATE	TIME	SYSTEM	OPERATOR	RELEASING OFFICERS SIGNATURE
	<input type="checkbox"/> YES <input type="checkbox"/> NO										
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challenged in the course of the cross-examination. What has been challenged are the inferences formulated by Phansalkar on the basis of the observations. The photographs themselves are revealing and the visual observations throw a good deal of light upon the question under consideration and illustrate the maximum that 'seeing is believing'.

It appears that the lawyers for the civil authorities, as also the Commission's Counsel, who has joined hands with these lawyers, on this point, are convinced that the photographs are extremely effective and revealing. One or two photostat copies were published in a number of papers including the 'Times of India'. Mr. Murudkar made an application requesting the Commission to institute an immediate enquiry into the matter and issue notices to the newspapers concerned, calling upon them to disclose the source from which they received the above photographs and Phansalkar's observations and to take appropriate steps against them. It is significant to note that the Commission's Counsel objected to this application and pointed out that the Commission has no power of instituting any kind of inquiry under the provisions of the Commissions of Enquiry Act. In his written arguments, however, the Commission's Counsel has complained that a lot of mischief has been done by the publication of the facsimile of the photograph. As pointed out in my order below Ex. 904, five copies were distributed to five Advocates and any enquiry into the question would mean that explanations would have to be called for from these Advocates. It is surprising that the Commission's Counsel in his arguments has suggested that the question of the publication of the facsimiles in newspapers require further investigation. As stated above, he himself pointed out that the Commission had no power of making any such enquiry. Furthermore, when Mr. Rege was sitting in my chamber, the correspondent of the "Times of India" entered the chamber and requested the Commission to hand over a copy of the photograph and also to grant permission to publish the same in the "Times of India". This request was turned down and this happened in the presence of Mr. Rege. Mr. Rege's volte-face in his argument on this issue is, therefore, not only surprising but also distressing. But that is not the point which I am concerned with at this stage. The point to be noted is that the grievance listed in Mr. Murudkar's application and repeated in Mr. Rege's written arguments appears to be that the photographs were very effective, which is euphemistic way of saying that a mere look at the photos revealed certain aspects which are unpalatable to the interested parties. I am intrigued by the arguments advanced by the Commission's Counsel, viz., that the publication of these photographs has done a lot of mischief. The Commission had already seen these photographs and read the observations. If anybody was entitled to give a verdict upon these photographs, it was the Commission and no one else. The publication of the photographs in the newspapers obviously could not produce any effect on the mind of the Commission. If at all, the publication may have produced an effect on the minds of the readers of the newspapers. Supposing the readers formed certain impressions, how was that going to affect the decision of the Commission is really beyond my comprehension. What does the Commission's Counsel mean by saying that the publication has done a lot of mischief? If it means anything at all, it means that his sympathies lie

with Mohite. Of course, Mr. Rege has made no secret of this in his arguments. Mr. Rege has advanced a fantastic argument to justify the remark made by him viz., that the publication of the photographs has done a lot of mischief. The argument is that because of the publication of the photograph, Phansalkar stuck to his observations, as if Phansalkar had made his observations without giving proper consideration and thought to the matter! What was after all the cross-examination which would compel Phansalkar to resile from the inferences suggested by him earlier in writing. I will point out presently that the cross-examination was not only ineffective but completely beside the point. To say that but for the publication, Phansalkar would have resiled from his observations or inferences put in writing, is to attribute dishonesty to Phansalkar which was never suggested to him in cross-examination. This argument may lead to diverse inferences. For instance, it may be that the publication did not allow scope for making an attempt to influence Phansalkar.

It is again necessary to observe that beyond getting the enlarged photographs and the observations formally proved, the *Commission's Counsel* did not proceed to ask a single question to Phansalkar challenging his observations in any way. The entire cross-examination was done by Mr. Murudkar. Surprisingly, however, the Commission's Counsel who did not think it worthwhile to ask a single question challenging any part of Phansalkar's evidence has now relied upon the questions asked by Mr. Murudkar for the purpose of demonstrating that Phansalkar's evidence is worthless.

That takes me to the cross-examination undertaken by Shri Murudkar on behalf of the civil authorities and the answers elicited by him from Phansalkar. The first point that was suggested to Phansalkar was that the enlargements made by him were excessive. Phansalkar denied that suggestion and stated: "It is essential for such examination and it is usually done." Mr. Rege has complained that the magnification was excessive, but has not produced any authority in support of that proposition. On the other hand, he has ignored the reply given by Phansalkar in answer to questions by the Commission, wherein he has referred to certain observations made by Osborn to the following effect:—

At page 70 Osborn says: [2nd Edn. (1946)].

(Sixth Printing, 1947).

"Many erasures and changes of a fraudulent character are made in documents which entirely escape detection when examined only with the unaided eye but when examined under the magnification of a good microscope they appear so plainly that anyone can see them."

Again at page 335 (foot-note) Osborn makes the following observations:—

"Retouched writing and pen lifts should be examined under different degrees of magnification by both direct and transmitted light and should be accurately photographed in enlarged form. Transmitted light photographs enlarged from two to four diameters or direct light photographs enlarged from three to ten diameters, as the conditions require, will usually show retouching so plainly it cannot be denied and requires some excuse, apology, or explanation."



In the face of these weighty pronouncements, it is idle for any one to contend that the enlargement was excessive.

Another line of cross-examination pursued, on which the Commission's Counsel lays heavy stress, is that no standard writings of digits and letters were obtained for comparison. Phansalkar pointed out that he was not asked to formulate his opinion about the authorship, and all that was required of him was to make observations about the condition of the writings in question. It seems to have been forgotten both by the lawyers on behalf of the civil authorities and the Commission's Counsel that no dispute was raised by any one about the authorship of the impugned writings. The author of those writings was undoubtedly Rajput. There was, therefore, on question of obtaining standard writing for the sake of comparison. The only question for consideration was : what is the condition that is revealed by the enlarged photographs of the writing as it is. Whether there are retouchings or alterations and whether it was possible to detect what was the original? I fail to understand how any standard writing would be of any relevance for answering that problem. It was pointed out to the witness that the writings of digits or letter forms may or may not conform to the copy book style. After the witness agreed to this proposition, he was asked to say whether it was not necessary to ascertain the natural way of the said writer, as to how he draws digits or letters. To this question again Phansalkar gave an effective reply by saying that that would be necessary only when the authorship of such digits or writings was to be determined and not when the condition of such digits or letters is under examination. It was suggested that digits or letter forms may appear to be natural to one person and unnatural to another as compared with the writings of other persons. Phansalkar denied the suggestion and stated that when digits or writings appear in a state which even on a first inspection strikes as highly defective, there would be no difference of opinion of any two persons even if they be laymen about their being in that defective condition.

A good deal of cross-examination centred round the observations made by Phansalkar regarding the figure '3' in '30'. Phansalkar had opined that the figure '3' appears to have been made up of adding of different parts to an originally different figure. This view was based on the consideration that this did not show any natural pattern in any accepted modified form of the said figure, particularly the top slanting line, the junction portion of the middle part, the starting of the lower curve and also the slanting ending of the lower curve, all of which show these as separately added components. A good deal of argument has been advanced by the Commission's Counsel on Phansalkar's statement that there are three accepted patterns for figure '3'. Phansalkar explained these patterns in very clear language and also he drew the three modified forms of figure '3'. When asked to state what was the authority for these modified forms, Mr. Phansalkar referred to copy book forms and asserted that this was an accepted fact. This statement was not further challenged, and it is extremely unfair for the Commission's Counsel to say that there are no such copy book forms, and we have to rely merely

on Phansalkar's word for it. Mr. Rege's argument also ignores the fact that Phansalkar in fact pointed to various modified forms of figure 3 at page 299 of Osborn's book. Phansalkar admitted that there is likely to be a wide range of variation in the form of figure 3 as written by different persons. When Phansalkar was asked to state whether it was not necessary to obtain the natural writing of the figure '3' of the person concerned for determining whether there were any variation in the figure '3' in the impugned writing, Phansalkar replied :

"The glaring defects as prevail in the figure '3' require no further examination to ascertain whether these could be natural writing characteristics. They proclaim themselves to be other than natural ones. Observation was the main point in the present case and it is the crux of any Expert examination of any Questioned Document."

It is significant to note that Bhanagey, who was giving instructions to Mr. Murudkar in carrying on the negative type of cross-examination, had not the courage to step into the witness box to deny what Phansalkar boldly emphasised by saying that the glaring defects proclaim themselves to be other than natural ones. As far as I was able to make out, this is the main argument advanced by the Commission's Counsel and this argument centres round the absence of any natural writing of the figure '3' for comparison with the impugned figure.

Another line of cross-examination that was pursued was : whether the writing of the digits and figures by the same author may vary from writing to writing. Phansalkar's reply in answer to this question is equally clear and scientific :—

"Variations in form may be present in such writings written on different occasions. But they would not show inconsistencies, particularly as unnatural retouching or patching."

No explanation whatsoever has even been attempted or obtained in regard to the inconsistencies, retouchings and patching in the writing of figure 3, and the cross-examination was a futile attempt to create suspicions about the validity of the replies given by Phansalkar.

The cross-examination of Phansalkar then turned to the question of the nib and the pen holder. Phansalkar stated that in view of the several re-written parts, even in single strokes, it was not possible to state whether the nib used for subsequent writings was the same one as might have been used for the original writings.

Questions were then asked regarding the comparison of strokes of different figures *inter-se*. Phansalkar stated :—

"I did not take measurements of width of strokes in comparison because what was apparent by inspection did not require measurements to further establish the same."

When asked to state whether it was not essential to effect comparison between the broader and thinner strokes, Phansalkar stated :—

"(1) That the broader strokes showed not as one writing but that they were the result of more than one writing and in some cases, i.e., on some occasions, there were frequent over-writings, and

(2) the identity or non-identity of the nib in question was not a point at issue."

It was vaguely suggested that Phansalkar had not applied any test at all and he merely relied upon visual observations, and Phansalkar replied that he subjected the writing to examination by direct light, by inclined and oblique light and by transmitted light and that he also used the hand magnifier, the *ultra lens* and the stereoscopic microscope for these examinations. He added that it was only after careful examination with the above appliances that he had finalised his observations. He admitted that he had not applied two modern aids, viz., (1) *Ultra violet* light and (2) *infra-red* photography. As regards the first, he pointed out that it was unnecessary because the microscopic examination confirmed his findings obtained by examination of photographs and *ultra lens*. As regards the second, he stated that the film required for the *infra-red*-photography was not immediately available. He also pointed out that in view of the frequent over-writings, there was little possibility of getting result about deciphering the original writings below the present over-writings. He admitted that in some cases it is possible to separate the original writing from the subsequent over-writing by *infra-red*-photography. But this is not possible in all cases. No question was asked to him as to whether it was possible in the present case. As regards the examination by *ultra violet* rays, Phansalkar stated that this is helpful when writings have been obliterated by chemical treatment.

Questions were then asked about the ink used for the original and the ink used for the alleged over-writing. Phansalkar stated that he examined the ink for one purpose and that is to differentiate the intensity of colour between the different parts of the letters and he did this under the stereoscopic examination. He admitted that he did not examine the ink chemically, nor did he examine it under *ultra violet* rays. He expressed his readiness to examine the ink under *ultra violet* rays if he was asked to do so by the Commission. He also admitted that he did not examine the ink under tinto-meter glasses, nor chromatographically nor under filter. He pointed out that the facilities for the detailed examination of the ink are not available in his office. He, however, added that ink examination for determining the identity or non-identity of inks or the age of the inks is not carried out in his office. He also admitted that he would not be in a position to say what was the ink of the original writing and what was the ink of over-writing. At the same time he pointed out that no such problem was presented to him. When asked to state whether the shades of ink in the disputed writing including the alleged alteration are the same, Phansalkar stated that they are not. He pointed out that the shades of ink of the light strokes are not the same in all the cases. He denied the suggestion put to him that the stroke in letter 'a' is of the same light shade as the two strokes in the second figure '1' in '11-30 a.m.'. Phansalkar stated that they were not of the same shade and pointed out that the stroke in letter 'a' is lighter in shade than the double stroke of the second figure '1' in '11-30'. He also pointed out the difference in shades in 'm' and figure '1'.

Questions were then asked about the texture of the paper and whether there was a possibility of uneven spread of ink film on that paper. Phansalkar pointed out that the texture was neither rough nor absorbent enough as to cause an uneven spreading of an ink film. The cross-examiner then turned his attention to the determination of the age of the writing on the basis of the ink. The witness stated that it was not possible to determine the age of the writing on the basis of the ink alone. He further stated that he was not called upon to determine the age of the writings. He further pointed out that it was not possible in the present case to determine the age of the writing because the time lag is short, and moreover, the quality of ink used for the present writing was not known. By time lag he meant the present date and the purported date of the writing of the document. Then an important question was asked as follows :—

“ Q.—There is, therefore, nothing in the disputed endorsement to indicate that all the writings, including the alleged scored writings were not made at one and the same time ?

Phansalkar's reply is worth-quoting :

“ A.—I do not agree with the view suggested, because the conditions of different strokes can be examined and as from that examination according to the authority of Harrison on this point, alterations and additions of ink lines can be stated from such examination even though there may not be any considerable lapse of time between them. In this connection, I refer to page 231 of the Book ‘Suspect Documents’ by Wilson R. Harrison, 1958 Edition (last paragraph).”

After this thumping reply, the cross-examiner did not pursue the point at all. It is worthwhile to cite the entire passage from Harrison's book at page 231/232 :

“ Once the original ink has dried, the order of writing of any additional strokes can be settled, because of the nature of the outline between the ink of the original stroke and that subsequently added. This enables the fraudulent nature of ‘raised’ cheques, where sums such as six and eight pounds are increased to sixty and eighty, to be demonstrated. If the addition is made at the time of drawing the cheque, there is a merging of the ink which is absent from the cheque which is ‘raised’ after the original ink has dried.”

It is clear from the above passage that, whether it is possible to determine the age of the original writing and the age of the additional writing by examination of the ink or not, it is possible to say whether the additional stroke or additional writing was not made at the same time as the original writing and that is exactly what is wanted in the present case. It is significant that although the Commission's Counsel has made a sarcastic reference to Phansalkar referring to Osborn, the Commission's Counsel has said nothing on this most important passage from W. R. H. Harrison. The Commission's Counsel has also forgotten that Phalsalkar referred to Osborn, Harrison, etc. only when he was asked by Mr. Murudkar to say whether he considered their works as authoritative. He agreed with the suggestion and added that he would consider the authority of Scotton ‘Photographic evidence’ and treated it with respect. He also referred to another book ‘Leica Manual’ by Willard De Morgon and Henry Lester in the context of photography.

At the resumed hearing, questions were directed to figure ‘1’ in ‘11-30’. Phansalkar stated that the faint portion of the first part of figure ‘1’ was, in all probability, the original figure. He pointed out that he had not based his views only on one circumstance, but he has taken the totality of circumstances

into account. Firstly, 9/10th portion of figure '1' is dense in colour and the remaining 1/10 is in faint colour. Secondly, the distinct demarcation between the faint and the dense colour in the first figure '1' leads to the inference that there is over-writing in the second part of the figure. Then a very important question was asked as follows :—

“ Q.—During your experience as an hand-writing expert, have you come across genuine or standard writings where there is no retouching over-writing wherein the same stroke contains faded ink at the top and the remaining lower portion is darker or denser in shade ? ”

Phansalkar replied :

“ During the course of examination of thousands of standard genuine ink writings, which were examined by me during the course of comparison of other writings, I have come across strokes varying in intensity from place to place. In some of these instances, there were noticed certain gradations of shades ; but in none of such instances, where there were faint and intense colorations in the same stroke, there were present distinct demarcation of the two zones and also any difference in width of the stroke at the junction of these two colorations ; such difference in the width being extended in one of two parts. ”

In my opinion, the distinctive characteristics, as mentioned by Phansalkar, are conclusive on the point and clearly establish that the different shades indicate that writings were made at different times. This is because of the presence of distinct demarcations of two zones and also because of the difference in width of the strokes at the junction of these two colorations. The attention of the witness was drawn to figure '204' on page 372 of Questioned Documents by Osborn, 1943 edition. The witness pointed out that the faint and dark portions in that figure were not similar although they appear to be so at a first glance. He then reiterated these distinctions which it is not necessary to discuss here.

The attention of the witness was drawn to the remarks in the foot note on page 372 of Osborn's 'Questioned Documents'. Phansalkar stated that he agreed with those observations, particularly because the caution is meant to be given by the author in regard to not very careful examination by an inexperienced person. In the same connection Phansalkar drew the attention of the questioner to remarks of Osborn at page 33 and the illustration on figure '185'. The observations of the author at page 333 are worth-citation :—

“ Fraudulent retouching, however, is delicately and carefully done and often shows the intention of concealing the operation and, as it finally appears, may be the result of many delicate touches of the pen to the paper at different points. The important principle to keep in mind is that the more unnecessary, delicate and hidden it is, the more significant retouching becomes as pointing towards lack of genuineness. It sometimes cannot reasonably be explained and accounted for when illustrated and properly interpreted. In some Courts, however, a witness is not permitted to discuss the comparative significance of various kinds of overwriting or retouching as evidence of forgery and it is obvious how fatal this restriction may be to effective testimony.

This delicate and hidden quality of retouching in a writing is to say the least, very suspicious and must be interpreted in a different manner from the plain open correction or re-making of a stroke where the ink was exhausted and the pen failed to write, or where it is perfectly evident that a part or the whole of a wrong letter was first made and the second letter or stroke was afterwards made over it. ”

The figure appearing on the same page, which is figure '185' is very significant. It is an enlarged photograph of the writing showing the retouchings in clear perspective. If the quality of retouching is much delicate and hidden then that by itself is an indication that it is not a case of plain open correction or a case of remaking of a stroke where the ink was exhausted and the pen failed to write. The plea, therefore, advanced by Rajput viz. that the ink was exhausted and hence the retouching has no legs to stand upon.

Phansalkar has given very good reasons as to why he considered that the double line in the second figure '1' in '11' must be regarded as subsequent writing. He stated :

"Thus the very fact that the double line starts much below the starting point of any of the three adjacent strokes, i. e. three adjacent digits, and that there is difference in colour gradation and also the fact that it is apparently intended to read as figure '1', though it is composed of two vertical strokes with their junction near the top, leads me to conclude that it should be a subsequent writing."

This is very convincing and any one who looks at the double line and compares it with the other digits will have no hesitation in agreeing with the view expressed by the expert. Then an ingenuous suggestion was made saying that the double line may be an indication of carelessness on the part of the writer. Phansalkar replied :

"This sort of double line writing, possibly meant to represent the present figure '1', may or may not be on account of carelessness on the part of the writer or may be equally on account of bungling on the part of the writer."

In regard to what appears as figure '3', Phansalkar pointed out that there are large number of retouchings and over-writings which have gone to make up what appears to be figure '3'. It was then suggested that excess of ink would give such appearance as presented by figure '3'. Phansalkar replied :

"I do not agree with the proposition that mere excess of ink in the pen would render an appearance to figure '3' as that in the present case."

The cross-examiner then harped upon the question of modified forms of digits and figures. The witness replied :

"Even accepting certain excessive idiosyncracies on the part of certain writers and certain other types of idiosyncracies, some of which have been illustrated in Osborn's standard book, it may be stated that, usually most writers do conform to writing digits after the accepted forms with due allowance for personal variation as developed in the course of writing. (Osborn's illustrations are on pages 301 and 299 of the same edition 'Questioned Documents')".

I have already pointed out that the Commission's Counsel has raised a hue and cry saying that Phansalkar has not shown any copy book form of digit '3' and one has only to rely upon Phansalkar's word for the same. It is clear that the Counsel has not cared to glance at page 299 of Osborn's book in which the various modified forms of figure '3' have been mentioned. This is the cavalier fashion in which the Commission's Counsel has proceeded to deliver his unjustified attack upon the hand-writing expert.

Any one who reads Phansalkar's evidence in a dispassionate way will be convinced that his evidence remains unshaken in cross-examination and, if anything, the inferences stated by him in bald terms in his observations received full support and authority by the manner as also the content of the answers given by him in cross-examination.

The Commission's Counsel's comments in his arguments on the usefulness of the evidence of the handwriting expert are absolutely beside the point. In the present case we are more concerned with the visual representations of the

figure, as appearing in the photographs and the observations flowing therefrom. The inferences drawn by Mr. Phansalkar have a close relation to his observations. The views expressed by Phansalkar have nothing to do with the usual problem which an expert has to tackle viz. whether the impugned hand-writing simulates the standard hand-writing. On such a point, the opinion of the hand-writing expert will have to be accepted with considerable caution. Assuming that the same caution also applies to the opinion expressed by Phansalkar in the present case—a proposition with which I do not agree for reasons elaborated above—the question is : whether there is sufficient corroboration in the opinion expressed by him. The Commission's Counsel complains that there is no corroboration whatsoever and one is left to act on the uncorroborated opinion of the hand-writing expert. The Commission's Counsel has arrived at this startling conclusion because he has completely missed the importance of the endorsement, 'Immediate please'. The endorsement 'Immediate please' is the most authoritative corroboration, if any corroboration was needed, to the inference drawn on a bare look at the endorsement and the enlarged photographs.

The internal evidence afforded by the following circumstances clearly point to the conclusion that the endorsement was made by Rajput on the night of the 11th :—

(1) The words "Immediate please" could be written only if the message was received during night time. They could never be written at 11-30 a.m. on the 12th. They would be entirely meaningless in the context of the happenings on the 12th viz. that the dam had collapsed and that Mohite was in Bombay.

(2) Mohite has himself plainly admitted that the words 'immediate please' are meant for him and that they indicate that he was to take action immediately on that endorsement.

(3) The over-writings in all the digits and letters in what now appears to be 11-30 a.m. The first '1' in '11' is over-written. The second '1' in '11' also shows signs of being the result of deliberate labour. In any case, the circumstance that it consists of two lines clearly shows that it is artificial. Then the figure '3' in '30' is also over-written. The zero in '30' is also over-written. Again the letter 'a' in 'a.m.' is over-written. Similarly the letter 'm' is also over-written. The dots after 'a' and 'm' also appear very artificial and their location is at awkward places. One can understand a mistake in one figure or one letter and an attempt at correcting the same. One cannot understand mistakes in every letter and every figure and over-writing and correction in every one of them.

In view of the above internal evidence, it is necessary for Rajput to explain how such an endorsement came to be made if it was made on the morning of the 12th at 11-30 and how there were so many mistakes in writing and why attempt was made to correct these mistakes. These are matters within the special knowledge of Rajput. Rajput has taken a stand that he made the endorsement at 11-30 on the 12th, and that whatever corrections he made, he made them immediately. When he took such a stand, no useful purpose could be served by putting to him definite suggestions, nor was it possible to make a suggestion to him that he must be sitting in the office of Mohite on that night or he must have received the message, either open or in an envelope, while he was sitting there. To each of these suggestions he could only give a denial. Furthermore, when the Commission is exploring facts, so long as the exploration is not completed and the stage of recording findings has not been reached, the Commission

has no specific case of its own to put to these witnesses. The contentions, therefore, that have been vehemently raised both by the Commissions' Counsel and Mr. Murudkar that this case was not put to Rajput and that case was not put to him, has no substance whatsoever.

The same comments can be made with regard to similar arguments that a particular case was not put to Mohite. Mohite's stand is clear. He says that he had not seen the message till the 13th. There was, therefore, no point in putting him suggestions viz. whether he received it in an envelope or an open message, nor in putting forward any other suggestions. It is only at the end of the enquiry that certain conclusions can be reached. The Commission's Counsel has argued that it was necessary, while they were in the box, to give them an opportunity of making such explanation as was open to them if it was intended to impeach Mohite or Rajput. There is no question of impeachment of either Mohite or Rajput, so far as these persons are concerned. The Commission's Counsel has again complained :

“ Rajput is not even asked a bold question that what he was telling the Commission was a deliberate falsehood, that a particular portion of Ex. 95-A was in Mohite's hand-writing and the rest was in his hand-writing, that he did the over-writing with the intention of suggesting that he received it on the morning of 12th July 1961 and this fabrication was either done by him *suo-motu* to help the master or at the instance of Mohite to mislead the Commission.”

The Commission's Counsel has raised ghost out of his own imagination and has tried to beat it when he says that Rajput or Mohite should have been asked a question that a particular portion of Ex. 95A was in Mohite's hand-writing. As I have repeatedly stated, there was no question of disputing Rajput's statement that the entire endorsement was in his hand-writing. Furthermore, when the Commission was exploring as to whether the document was a fabrication, the Commission could not put a definite suggestion in cross-examination that it was a fabrication and that the fabrication was done for a particular purpose. At the end of the enquiry on the basis of circumstantial evidence and on the basis of the intrinsic evidence afforded by the document itself, the Commission can now formulate certain conclusions and if these conclusions are accepted by the Government, then the Government may consider as to what enquiry is to be held against Mohite and Rajput, and if they hold any enquiry at all, then obviously there will be sufficient opportunity afforded to these officers to put forward their defence. It is no use complaining that opportunity has not been given to these officers to put forth their case. As stated above, in view of the stand taken by them there was no need at all of putting forward any suggestions to them, because the only reply that one could get to these suggestions would be a denial pure and simple. If those who are in possession of special information sit tight over the same and refuse to disclose the same, then it will be open to the Commission to draw such inferences as legitimately follow from the circumstances established in the case. In a criminal case, it is always open to the accused to sit on the fence and to take a negative stand. In an enquiry whose object is to find facts, it is the duty of every officer to help the Commission in recording findings of facts. If they do not choose to render help for fear of the consequences thereof, no one, least of all the Commission's Counsel can blame the Commission for not giving an opportunity to them to unfold their stand.

It is idle to complain that no suggestion was made to Rajput saying that he was present in the Commissioner's office on that night. I cannot understand how can such positive suggestion be put forward to Rajput by the Commission. The Commission is not in the know of facts. It may be that Rajput was sitting in the Divisional Commissioner's Office. It may as well



be that he was sitting at his house and he received the envelope while sitting in his house. How is it possible for the Commission to make a positive suggestion on a matter like this passes my comprehension? It is again idle to ask the question how can Shaikh Hussain Raj Amar Gol leave the Council Hall? Mr. Rege has gone to the extent of saying that if the watchman leaves the Council Hall, there will be an opportunity for burglars to enter the Council Hall and commit theft. This shows to what ludicrous length the Commission's Counsel has gone in advancing his arguments which, according to him, it is his bounden duty to do, to dispel what he calls prejudices against the Divisional Commissioner. Are we accepting the evidence which shows that there was only one watchman kept in the Council Hall even on that critical day, as gospel truth? Assuming that there was only one watchman, it is an admitted fact that a neighbour and probably a friend of Shaikh Hussain Raj Amar Gol was sleeping on that night in the Council Hall. This may either be an accident or Shaikh Hussain Raj Amar Gol may have asked his friend's assistance for that night. Was it difficult for Shaikh Hussain Raj Amar Gol to rouse his friend from sleep and ask him to send the message to Rajput either in the Commissioner's office or at his house? Furthermore, according to the evidence led on behalf of the civil authorities, some trucks were asked to park in the compound of the Divisional Commissioner's office on that night. Was it difficult for Shaikh Hussain Raj Amar Gol to request one of the drivers to take the envelope either to Rajput or to the Divisional Commissioner? These questions suggest that unless one is prepared to take whatever falls from the lips of the witnesses, who are supporting the case for the civil authorities on trust, several inherent difficulties are in the way of accepting the story viz., that there was only one watchman in the Council Hall, that he was instructed not to leave the Council Hall, that he received the message knowing that it was urgent and yet he did not send it to proper authorities and that such a message was allowed to lie idle on the table of the head clerk till the same was picked up at about 11-30 a.m. on the 12th by him. In view of the fact that it was a critical night and further in view of the fact that the messages from the Military Engineer Group were expected to arrive and also in view of the fact that the Collector himself had kept three clerks in his office for receiving messages, it is quite reasonable to conclude that similar arrangement must have been made by the Commissioner and some officers must have been kept in the Commissioner's Office for receiving messages. The argument that has been advanced in all seriousness by the Commission's Counsel as also by Mr. Murudkar, that no suggestion was made either to the Commissioner or to Rajput or to Joshi, that a specific arrangement was made and that Rajput was kept in the office for the purpose of receiving messages, is devoid of substance. A question was asked to Mohite in the following terms:

"Are you suggesting that no arrangement has been made for the despatch to the addressee of a message which is urgent, very urgent or very very urgent?"

Mohite's answer was 'Yes'.

If a certain inference follows from the intrinsic evidence afforded by the document itself and that inference is supported by the surrounding circumstances, it is quite legitimate to draw that inference, whether or not suggestions have been made to the witnesses in regard to each and every implication arising from that inference.

I will now formulate the conclusions that follow from the above somewhat lengthy discussion:—

(1) The message at Ex. 96 was despatched from the Military Engineer Group and Centre, Kirkee, in an envelope.

(2) The message was delivered by G. K. Karle, despatch rider to Shaikh Hussain Raj Amar Gol in the Council Hall.

(3) While delivering the envelope, Gangaram Karle told Amar Gol that the message was urgent and should, therefore, be forwarded to the addressee immediately.

(4) Shaikh Hussain Raj Amar Gol assured G. K. Karle that that would be done.

(5) In all probability, Rajput was sitting in the office of Mohite during that night and Shaikh Hussain Raj Amar Gol must have handed over that message to Rajput.

(6) Rajput must have opened the envelope and must have written the endorsement "Immediate please" in the margin of the message mentioning the time of the receipt.

(7) After this, the message with the envelope must have been sent to Mohite and Mohite must have read it.

(8) It is not possible to say when the message was returned back to the office and what happened to the envelope.

(9) The time and the date were altered so as to make them appear "11-30 a.m." and "12-7".

(10) The object of these alteration was to show that the message was lying on the table of Rajput and was only opened by him at about 11 or 11-30 on 12th July 1961, suggesting thereby that the message never reached Mohite.

(11) Mohite was interested in securing the alterations in regard to time and date with a view to avoiding the reproach that he departed for Bombay on the morning of the 12th although he knew from the message that the dam was in a critical condition.

(12) The endorsement "Immediate please" is very significant and is consistent with only one hypothesis, viz., that it was made on the night of the 11th and was meant for Mohite.

(13) Mohite himself has admitted that the endorsement meant that the message should be sent to him immediately. In view of the fact that on the morning of the 12th the dam had collapsed and further in view of the fact that Mohite was not in Poona, it is impossible that anybody would write the words "Immediate please" at 11-30 a.m. on the 12th.

(14) The evidence of the hand-writing expert shows that the time has been altered from 1-10 to 11-30. This evidence is corroborated, if any corroboration is needed, by the intrinsic evidence of the contents of the endorsement, viz., "Immediate please" and the condition of the figure and letters indicating time.

(15) The alterations could not be in the ordinary course, as suggested by Rajput, but must have been deliberate and intentional.

It now remains to consider some minor arguments advanced by the Commission's Counsel and by Mr. Murudkar. On some of these points, there is remarkable identity of view between Mr. Rege and Mr. Murudkar. Mr. Rege at page 176 (*vide* his written arguments) says :

"I may be permitted to say that the suspicion attached to this exhibit (Ex. 95A) was mainly responsible for suspicions being attached to every possible writings produced by the police and revenue officers, such as Dandavate's jottings, Heble's jottings, Kekre's jottings, Faraskhana Police records and other. But the same suspicions were not extended to unsigned plans or scratches on the plans produced by the Irrigation Officers or even to the placement data produced by them. If at all there was any ground for any suspicion, it was in respect of these documents on which a definite allegation was made by C. G. Kale, the Ex-Chief Engineer of Bombay. But he was not examined as a witness."

Let us now see what Mr. Murudkar has to say on the same point :

“When the Irrigation Officers were under examination, no allegations were made regarding any of the records submitted by them. In this connection we would refer to the statement filed by C. G. Kale, retired Chief Engineer, who had after taking inspection of the record submitted by the Irrigation Department, observed in his written statement, that these records contain a number of erasures of the signatures on the original plans and other documents. He has stated that some of these documents were unsigned and others appeared to be not the original papers. For obvious reasons Mr. Kale was not examined by the Commission.”

Although the language is not identical, the substance underlying these two sets of arguments is the same. It could either be a case of intellectual communion or a spiritual affinity or two great minds thinking alike. I will show immediately that the Commission's Counsel as also the Advocates for the civil authorities have fallen into the same error, which it is difficult to believe is a matter of accident. In view of the importance attached by these Advocates on this point, I would discuss this question thread-bare and expose the utter falsity of the allegations contained in the two passages cited above. C. G. Kale, the retired Chief Engineer to the Government of Bombay, has submitted three written statements at three different times, the first on 8th February 1962, the second on 14th February 1962 and the third on 21st February 1962. In the first statement in the very first paragraph he refers to the files shown to him and says :

“Files dealing with the correspondence relating to the Panshet dam were made available to me, but I could not get the final plans and estimates thereof as sanctioned. For information of the Commission certain cross sections of the Panshet Dam, as sanctioned and as actually executed, were made out and they were shown to me. Among them the plan showing damage to the inlet tower and another one were not with the other three i. e. plans 3 and 4 were kept back. None of these plans bore any dates or facsimile signatures of any P. W. D. Officers. It is surprising that a host of plans in the files bore no dates of preparation ; neither did they bear any names of officers. This struck me as peculiar, indeed, as all sequence of thought and planning is thereby destroyed and it conduces to irregularities. The plan submitted to the Commission had only one cross section, whereas changes over the sanctioned plans were made at several places, thus leading to transition zones, the latter contributing to weakness. How far these plans given to the Commission can be considered by them as genuine is a point. That the original plans cannot be given to anybody one can easily understand.”

On an analysis of this paragraph we find that four distinct complaints were made by Kale :

- (1) Final plans and estimates as sanctioned were not made available to him.
- (2) In the drawings of cross sections produced before the Commission, two drawings do not find place i. e. drawings Nos. 3 and 4. In other words they have been kept back.
- (3) None of the drawings produced before the Commission either bore any date or facsimile signatures of P. W. D. Officers.
- (4) Host of plans in the files (probably this has a reference to C. D. O. files) bore no dates of preparation, neither did they bear names of any Officers.

It is, therefore, a question as to how far these plans given to the Commission can be considered as genuine is a point.

As a later stage he has made a fifth complaint saying that file No. 26 of the register recording lake levels has not been initialled by any one. He has raised the question whether this can be regarded as authentic at all.

As regards the first viz., that the final plans and estimates as sanctioned were not made available to Mr. Kale for examination, Mr. Kale himself has given the answer in the last sentence of the paragraph cited above. He says that the original plans cannot be given to anybody one can easily understand. Apart from this, it is necessary to remember that such of the documents as were asked for were made available to the experts. Mr. Kale does not say that he asked for final plans and estimates and he was refused inspection regarding the same. All that he says is that these documents were not made available to him. The Commission has maintained a register of the documents that were made available and were inspected by the experts. It is clear from this register that Mr. Kale had inspected C. D. O. files Nos. 5, 18, 19 and 25 and a set of four drawings Nos. 1, 2, 5 and 6 on 29th January 1962. Again on the 30th of January 1962 he examined C. D. O. files Nos. 18 and 19 and the four drawings Nos. 1, 2, 5 and 6. File No. 18 contains final plans of the dam and file No. 19 contains revised design values and other data. It seems that Mr. Kale probably was not able to find out these plans and estimates from the file and his complaint appears to have been based on a misunderstanding. It is nobody's case that there were no final plans or estimates as sanctioned. Padhye in his deposition has referred to the various plans Exs. 132 to 146 in answer to questions by the Commission's Counsel. In answer to further questions with permission by the Commission's Counsel he again referred to ten plans, Exs. 172 to 180. It is necessary to remember that the plans in respect of an earth dam are in the state of a continuous evolution. It is significant that the evidence given by Padhye was not challenged either by the Commission's Counsel or by the Counsel on behalf of the civil authorities so far as the plans and drawings are concerned. Again G. N. Pandit, the Chief Engineer, in answer to questions by Shri H. R. Gokhale, the Counsel for Irrigation Officers, asserted :

"I accorded my approval and sanction to the plans and designs regarding the Panshet Dam."

Earlier in answer to the questions by the Commission's Counsel, Pandit stated :

"The designs and plans for the Panshet Dam were prepared by the C. D. O. After the plans were prepared they were shown to me for technical sanction."

These statements also have gone unchallenged. It is not as if there were no sanctioned final plans and estimates so far as the Panshet dam is concerned. The first complaint, therefore, is meaningless. The second complaint has reference to the plans produced before the Commission. It appears from the index submitted by the irrigation authorities that they had prepared these drawings, but they produced only four of these drawings and did not produce the third and the fourth. These drawings are prepared for the use of the Commission. These are not the original drawings at all and the question, therefore, of putting signatures or dates by the P. W. D. Officers does not arise. These drawings were produced for ready reference. These drawings were submitted on 12th January 1962 by G. N. Pandit along with his report Ex. 77. These drawings have been exhibited as Ex. 78. These drawings were inspected by Mr. Kale both on the 29th and 30th of January 1962. There is no substance in Mr. Kale's contention, that drawings 3 and 4 have been kept back. Nobody had asked for drawings Nos. 3 and 4. These

drawings, as stated above, were not original drawings but were prepared at a later stage and for a specific purpose viz., of showing the modifications in the original design, the damage to the inlet tower and the so-called progress of the work done and also regarding the permanent waste weir and temporary waste weir. Kale never said that he wanted drawings Nos. 3 and 4. There is no question of keeping back drawings Nos. 3 and 4 because they were not original drawings and were prepared for a specific purpose. I had a look at drawings 3 and 4. Drawing No. 3 relates to the damage to the transition box and drawing No. 4 relates to the breach in the Panshet dam. The Commission did not think that these drawings were in any way relevant or necessary for the present enquiry. It would thus be seen how baseless the charge about drawings Nos. 3 and 4 having been kept back, is. Equally baseless is the charge that these plans did not bear signatures or dates of the P. W. D. Officers. Since they are not original drawings and since they were produced by Pandit along with his report, there was no need of Pandit or anybody else putting his signatures and dates on these documents. The fourth charge of Kale is that hosts of plans in the files bore no dates of preparation, nor did they bear any names of officers. There is no substance in this complaint either. It is not necessary that every tentative plan or drawing should bear the signature of the maker. So far as the final plans are concerned, Pandit has stated that after they were prepared they were shown to him for technical sanction. He has also stated that he has accorded his approval and sanction to the plans and designs regarding the dam. These statements were not challenged in cross-examination. As regards the last charge, Bhale-  
rao has explained as to why some pages were left blank and also as to why page No. 26 remained to be uninitialled. Bhale-  
rao says :

“The register of lake levels is shown to me. The writing showing the lake levels started from 13-6. The entries were made by Sakhalkar. The entries in this register have been made in the regular course of business. The entries from the 25th have been taken up on a subsequent page i.e. from page 26 onwards. This was done probably because the writer wanted to show observations at closer intervals. The register remained in the custody of the S. D. O. It is not necessary that the writer should put his initials below these entries.”

These answers were elicited by Mr. Rege in his cross-examination. These answers afford a complete reply to the vague charges made by Mr. Kale. It is significant that Sakhalkar was not cross-examined at all on this point. The last charge is so flimsy that it does not deserve any notice.

Mr. Rege has put the placement data on the same footing “as the unsigned plans.....that suspicions were not extended to the placement data.” It is difficult to understand what exactly he is hinting at. If a reference is to the register relating to the placement data, then it is noteworthy that no questions were asked to any witness by Mr. Rege challenging the date mentioned in these registers. Mr. Kale has made no reference to the placement registers at all. This is the state of the allegations made by Mr. Kale in his written statement.

It is surprising that the two senior Advocates viz. the Commission's Counsel and the Advocate for the civil authorities should have proceeded to level reckless charges against the Commission for discrimination and partiality without examining the substance of the allegations made by C. G. Kale himself. Mr. Murudkar has gone to the length of suggesting that Mr. Kale has been deliberately omitted for fear that his evidence would make unpleasant disclosures so far as the plans, designs and other documents of the irrigation

department are concerned. It may be pointed out at this stage that Mr. Kale's name appeared in the list of witnesses to be examined as an irrigation expert. The question as to whether he should be examined before the Commission, was discussed by the Commission on 29th June 1962 with all the Counsel including the Commission's Counsel Mr. Rege and also Mr. Murudkar. It was decided with their consent that the following witnesses should be dropped :-

Mr. P. N. Damry,  
 Mr. B. P. Kapadia,  
 Mr. C. G. Kale,  
 Mr. V. D. Sathye,  
 Mr. S. R. Ranade, and  
 Mr. M. S. Sohoni.

Having agreed to drop Kale, it is idle now to contend that Kale has been deliberately kept back. It is also idle to suggest that Kale has been deliberately dropped by the Commission because his evidence would have been unfavourable to the Irrigation Officers. I have pointed out above, that each of the charges levelled by Kale, on which much store has been laid by the Commission's Counsel and by Mr. Murudkar is baseless. It may be pointed out that the Commission had expressed that Thosar Engineer should also be dropped. The Commission's Counsel insisted as also Mr. Murudkar insisted that Thosar should be examined and, as a matter of fact, the Commission did examine him as a witness. If the Commission's Counsel or even Mr. Murudkar had insisted that Kale should be examined, then certainly the Commission would have acceded to that request. It is very unfair at least for the Commission's Counsel to have relied upon Kale's allegations without trying to verify their accuracy and without insisting that Kale should be examined as a witness before the Commission. The discussion regarding Kale's allegations really amounts to digression, as it has no relevance upon the issue under consideration. I have been, however, constrained to discuss this aspect at some length because of the sinister suggestions and imputations contained in the arguments, not only of Mr. Murudkar but also of the Commission's Counsel. The above discussion again will illustrate what has been stated earlier that the arguments advanced by the Commission's Counsel are based on misrepresentation of facts, half truths and twists given to certain admitted or proved aspects. Why did not Mr. Rege insist on a strict proof of the documents about which Kale had made allegations or about which he had suspicions? Why did he not ask any question to any of the irrigation officers in regard to these documents challenging their genuineness and suggesting that there should be a detailed investigation about the genuineness of any of these documents? It is pertinent to note that none of the experts, who were examined before the Commission, has raised any doubt about any of these documents. Why did he not challenge at least those documents which, according to him, did not bear the signatures of the officers concerned? It is now unfair for Mr. Rege to make a sweeping charge that whereas the Commission looked upon some of the documents produced on behalf of the civil authorities with suspicion it did not attach any suspicion to the documents produced on behalf of the irrigation authorities. It is no use making a generalised statement regarding documents of this side or that side. It was the duty of the Commission's Counsel to specify the documents which, according to him, were suspicious and which required scrutiny. Not only the Commission's Counsel has failed to do so while these documents were brought on record, but even in his arguments he has not pointed out one document as being suspicious. This itself shows that

the Commission's Counsel was approaching this case from a prejudiced mind and has departed from the detached objectivity which was expected of the Counsel appointed to assist the Commission.

It may be pointed out that the Commission's Counsel has devoted as many as 60 pages in discussing problems arising out of Exs. 96, 96A and 95A. He has started his discussion at page 115 of his arguments and prefaced it by saying :

"It is needless to say that these matters are not relevant so far as the second reference to the Commission is concerned. But I propose to deal with them as they are matters of prejudice and should not be allowed to remain unexplained."

At the end of this part of the discussion at page 185, the Commission's Counsel observes :

"I must apologize for devoting a lot of time to this topic of alleged fabrication, though as stated at the outset of the discussion of this topic I frankly confess that the topic is not the subject matter before the Commission. The reason why I have dealt with it at this length is to eliminate further unnecessary suspicions in appreciating the evidence and deciding the only two references before the Commission."

The Commission's Counsel has called the questions arising out of the above documents as irrelevant because he thinks that Mohite's role as a Commissioner was to co-ordinate the activities of the various departments so far as the precautionary measures and other arrangements were concerned. I will presently deal with this aspect and will also discuss the question about his responsibility which has been raised both by the Commission's Counsel as also by the Advocate on behalf of the civil authorities. For the time being, it is sufficient to note that the questions arising out of Exs. 95A and 96 have a vital bearing on the matters under enquiry. The fact remains that Mohite departed for Bombay on the morning of 12th, at about the same time as the dam was overtopped. As a fact finding body, the Commission must consider whether Mohite was justified in leaving Poona at a moment of crisis and what effects his departure produced on the administration in Poona. It has already been pointed out, that left to himself, Prabhakar would not have even convened a meeting, which is a measure of his immaturity. It is not difficult to visualise Prabhakar's plight when he was confronted with an unprecedented situation created by the breach of the dam. The Commission, therefore, had to scrutinize the case set up for Mohite viz. that he believed that the dam would be safe, in case, the night passed off peacefully and that he had not received the message at Ex. 96. Mr. Rege has dismissed the considerations arising out of Exs. 95A and 96 as matters of prejudice. This shows that he was not approaching the question with an open mind. He has frankly admitted that he regards the enquiry about these documents as futile and has only resulted in the accumulation of suspicious circumstances against Mohite. He, therefore, feels that it is his bounden duty to go to Mohite's defence. Any one who has followed the above discussion will be convinced that Mr. Rege's approach is superficial. Further, it was wholly unnecessary for Mr. Rege to import heat and vehemence in the discussion of this problem. There is no place for vehemence in the development of a logical argument. A mere perusal of these arguments will show how unbalanced Mr. Rege's arguments are. He seems to have forgotten that his role was not to defend this party or that party, but to present manner. Of course, it was his duty to place both sides of the problem and to discuss the pros and cons of the situation. Actually he has presented only one side, that is the side of Mohite and some of the civil authorities, and his arguments amount in fact to an extension of the arguments by Mr. Murudkar.

### III. Did Mohite attend the dinner at the Lions Club ?

At this stage I may refer to another interesting episode in this case which arose out of Mr. Phadke's cross-examination of Mohite relating to the drafting of the press-note Ex. 428. The witness had stated earlier in Shri Rege's cross-examination that the task of drafting the press-note was left to the Regional Publicity Officer because he was in a hurry. When Mr. Phadke asked the reason for this hurry, Mohite stated that the hurry was on account of the illness of his mother. Then it was suggested by Mr. Phadke that he did not apply his mind to the arrangements that were decided upon, because of his mother's illness which suggestion Mohite repudiated. Then what followed may be set out in the form of questions and answers which were exchanged between the Advocate and Mohite :—

“ Q. Is it true that you had to attend some function on the night of the 11th in the Lions Club ?

A. I do not think I attended any function at the Lions Club on that night.

Q. Could you not be more positive or assertive on that point ?

A. I am giving a reply to the best of my recollection. I am not a member of the Lions Club, nor of the Rotary Club. During the last two years, I attended one dinner held under the auspices of the Lions Club. That was about over eight months ago. A dinner took place either at the Turf Club or Poona Club.”

These replies were given by Mohite on 4th May 1962.

The answer given by Mohite viz., “ I do not think that I attended any function at the Lions Club on that night ” was obviously evasive. He was afforded an opportunity to be more positive and specific. Even then, he refused to avail himself of that opportunity and said that he had given the reply to the best of his recollection. What he stated thereafter was a denial of the fact that he had attended the dinner on the night of the 11th under the auspices of the Lions Club. The performance of Mohite on this point is obviously not honourable to any man of his position. It is impossible that Mohite would not remember whether he attended the dinner in the Lions Club on the night of the 11th, particularly in view of the fact that early next morning he departed for Bombay and that the collapse of the dam took place resulting in a great tragedy and also resulting in a number of accusations and recriminations by the public against the civil authorities. Again, it is significant that Mohite had not the courage of denying straightway that he attended the dinner. The evasive reply given by him did betray a guilty consciousness on his part. Evidently he was trying to conceal an unpalatable truth. At the resumed sitting on 7th May 1962, Mohite told the Commission of his own, that he made enquiries and found that he attended the dinner of the Lions Club at 9-00 p.m. on 11th July 1961. Was it necessary for Mohite to make enquiries that he attended the dinner on that fateful night ? The admission about his attendance at the dinner evidently was forced on him because he felt certain that evidence would be led to show that he attended the dinner. That is why he had to tell the Commission that he made enquiries and found that he attended the dinner on the night of the 11th. Every one expects an officer of his rank to tell the truth and to tell it in a very frank and straightforward way. Mohite has evidently fallen from that standard and he has done so not without an ulterior object. Mohite was further cross-examined by Mr. Phadke and the following are the answers given by him :—

“ I now say that the dinner of the Lions Club was held in the Poona Club and when I went there, the dinner was almost half. I reached the place at about 9-30 p.m. and I was there till about 10-30. There was a film show



after the dinner. I attended it till the picture of the arrival of the Queen was shown. Even now I would not agree that I did not draft myself the press-note because I was in a hurry to go to the Lions Club dinner." Mohite's memory which was hazy on the previous day has suddenly blossomed up, so that he could remember all the details relating to the time of his reaching the place, the time of his departure and the fact that a film show was staged and that he attended to that show till a particular stage viz. the arrival of the Queen. Could there be any more condemnation of Mohite's performance about the haziness of his memory, to which he tried to take recourse, in giving answers on the previous day? This matter has been dismissed by the Commission's Counsel as a matter of prejudice. This again clearly evinces a partisan attitude on the part of the Commission's Counsel. I can understand the Commission's Counsel saying that the answers given by Mohite are relevant only for the purpose of showing whether Mohite was a straightforward witness or not. The Commission's Counsel does not consider Mohite's performance as relevant even on that significant point. The relevance of this episode can be considered also from another point of view. If Mohite thought it fit to attend the Lions Club dinner at 9-30 p.m. and continue to sit there even after the dinner was over for witnessing, at any rate, a part of the cinema show, it is clear that he did not take things seriously, notwithstanding the fact that the condition of the dam was dangerous. It was Mohite's duty to see that the precautionary measures devised in the Divisional Commissioner's meeting were implemented. It was also his duty to take rounds in the city to supervise the warnings that were being given and also to see whether there was co-ordination between the activities of the three agencies. It should be recalled that on the night of the 19th of July 1958, when warnings were being given, Mr. Sri Prakasa, the then Governor, himself took rounds apparently to satisfy himself that proper arrangements were made. The Governor did not think it either below his dignity or a matter which did not fall within his domain to take rounds in the low-lying areas in which warnings were being announced. Beyond the bare word of Mohite, there is no evidence to suggest that, as a matter of fact, Mohite went back to his house after the dinner at 10-30 p.m. It is difficult to place implicit reliance upon his uncorroborated testimony because of the evasive replies and the final confession which he had to make most reluctantly about his attendance at the Lions Club dinner. It is quite conceivable that Mohite went home late at night so that when the message, Ex. 96, was sent to him he was wide awake. It may as well be that Mohite might have gone to the Council Hall on his way from the Lions Club and collected the message himself or, at any rate, seen it. Finally, not only Mohite's veracity but also his memory are in question in the present case. Mohite testifies to a certain conversation having taken place between him and the Collector on one side and the two engineers on the other. Why should Mohite's word be preferred to that of the two engineers in view of Mohite's attempt at suppressing the truth? Alternatively, how can we rely upon Mohite's memory and take the account given by him of his conversation with the two engineers on trust, particularly when he did not remember such a memorable event as his attendance at the Lions Club dinner on the event-packed night of the 11th?

#### IV. Mohite's departure for Bombay

The question then arises as to why Mohite should think of departing for Bombay in spite of having received the message Ex. 96. Several answers to that question are possible and we are evidently in the region of speculation.

I. Let us discuss two possibilities—

(1) Mohite did gather from the message that the situation at Panshet was serious and overtopping of the dam may occur at any time.

On the above hypothesis the following possibilities are opened out :—

(i) Mohite considered that the measures designed were appropriate and there was nothing more to be done about it.

(ii) Mohite considered the measures as utterly inadequate and, therefore, the best way was to run away from the field of operations.

II. Mohite did not regard the situation as serious because the latter part of the message suggested that the work of bag-stacking would continue for the night and the work of revetment would be undertaken the next morning.

On the first alternative viz., that having regarded the condition of the dam as serious, Mohite's departure is unjustified on either of the two assumptions. Mohite's assessment about the precautionary measures was obviously rash and based on insufficient understanding of the magnitude of the floods. The second alternative also involves want of application and consequent incorrect appreciation of the situation. On either alternatives, it was wholly wrong on the part of Mohite to have departed for Bombay, in the face of imminent danger to the dam.

That being the case, it is unlikely that Rajput would alter the time of the receipt of the message without Mohite's knowledge and approval. There cannot be any direct evidence on a point like this, and the question will have to be determined on probabilities. If there is an alteration, the question is, who was interested in effecting the alteration? For whose benefit the alteration was made? Evidently the alteration was made for Mohite's benefit with the object of covering his apathy or indifference or recklessness in making a departure to Bombay on the early morning of the 12th.

It is the case for Mohite that he had to go to Bombay on the 12th because a meeting was held by the Secretary for Agriculture in connection with the finalisation of the Agricultural Programme under the Third Five-Year Plan of the Maharashtra State. Questioned on this point, Mohite in his deposition (Ex. 516) stated :

“ The meeting that was held in the Sachivalaya on the 12th was to be with the Planning Section. Shri Yardi and Kasbekar were to represent the Planning Section in the meeting. From the Agriculture Department, Secretary, Agriculture Department, Shri G. V. Bedekar, myself and officers of my department were to represent. That means that the officers to attend the meeting were myself, my officers, Shri Yardi, Shri Kasbekar and Shri G. V. Bedekar, who was the Secretary of the Agriculture and Forests Department. Originally, the meeting was scheduled to take place on the 8th of July. I think I had received a written invitation for attending the meeting to be held on the 8th. I am prepared to produce it tomorrow. The letter was in the form of a circular. That meeting was postponed to 12th. The Department of Agriculture received a message on the phone stating that the meeting was postponed to 12th. Mr. Sukhatankar, Under Secretary, sent that message. As far as I remember, the copy of the circular of the meeting to be held on the 8th was addressed to all the Secretaries and a copy was endorsed to me as an Agricultural Commissioner. The meeting that was convened to take place on the 8th of July was a regular meeting and not merely meant for informal discussion. The agenda was not mentioned, but the subject was mentioned. My presence at this meeting was essential. I would not suggest that the meeting was so essential that it would not brook a delay by a day or two. I agree that I could have suggested postponement of the meeting. It was, however, with the Government whether to accept the suggestion or not. On the 11th night, I decided not to attend the meeting by cancelling my departure to Bombay and, therefore, I did not think it necessary to

inform Mr. Bedekar, Secretary, that the meeting should be postponed to some other convenient date. My stenographer has now taken out the cyclostyled copy of the circular which I am producing (Ex. 520 with Annexure A)—

- Q. Your attention is invited to the following sentence in the circular Ex. 520 : "I trust time and the date of the meeting will suit you and your officer and will be convenient. Will you kindly arrange to call the meeting of the officers as far as you are concerned on the date and the time shown in the programme." Does this not suggest that your convenience was consulted and it was open to you to say that the 12th day, to which the meeting of the 8th was adjourned, was inconvenient to you ?
- A. The Circular, Ex. 520, was not addressed to me or to the other departments, but the circular was addressed to all the Secretaries to Government and a copy of this circular was sent to me. So the convenience which is mentioned in the sentence above is the convenience of the Secretaries concerned. The meeting was really a conference for discussions between the Head of the Department, i.e. myself and my officers, the Secretary of the Administrative Department, i.e. Mr. Bedekar on one side and Mr. Kasbekar, who represented Planning Section, on the other. Yardi, the Finance Secretary may remain present during these discussions or may not remain present.
- Q. Could the meeting have been postponed to some other date on a representation made by you to that effect ?
- A. I will not be able to answer that question.
- Q. Do you seriously believe that your request would have been turned down though strongly pressed for and supported by good reasons ?
- A. I am unable to make any guess on that point. I am unable to say whether they would have turned down my request.
- Q. You said that you could not depute any of your subordinate officer to the meeting and that your presence was essential. Since, therefore, there could be no discussion without your presence, would it not be reasonable to assume that the discussions would have been required to be postponed on a suggestion or request made by you ?
- A. Perhaps they may discuss certain matters during my absence, but again they would postpone finalisation of the discussion to some other date.
- Q. When you had already taken the decision on the night of the 11th to cancel the visit to Bombay, will you enlighten the Commission as to the reasons which prompted you to revise the decision and again to decide on the journey to Bombay."

(It is not necessary to refer to the reply given by Mohite on this question at this stage).

It is clear from Mohite's replies that he was playing upon words and resorting to verbal jugglery for answering a simple question whether he could have secured adjournment of the meeting. When his attention was drawn to the wording of the circular asking whether the date suggested was convenient, Mohite pointed out that the circular was addressed to the Secretaries. When it was pointed out to him that his request for adjournment on good ground could not be turned down, he stated that he was unable to make any guess on that point. At one stage he stated that he would not be able to answer that question. When it was pointed out to him that in his absence no serious

discussions could take place, he had to admit that the preliminaries would be discussed, but the finalisation would be postponed. In appreciating this aspect of the matter, it is necessary to remember that, on his own admission, he had decided to cancel his visit and it was only in the morning after he had a talk with Prabhakar that he cancelled the cancellation of his decision and again decided to embark upon a journey to Bombay. It is clear that Mohite could have postponed his journey to Bombay. To be more accurate, he ought to have done so, particularly when he had decided on the previous night that he should not attend the meeting. His remaining on the spot was more important in view of the brewing crisis, and his cancellation of the trip would not have affected the position one way or the other.

Here again it may be pointed out that the Commission's Counsel has found fault with the Commission for questioning Mohite about the contents of the circular suggesting that these questions were asked because the Commission doubted the existence of the circular itself. This is a most perverse suggestion to make, particularly for the Commission's Counsel. Questions were asked because the Commission did not doubt that a date for the meeting was fixed. But the Commission wanted to know whether the meeting could have been postponed. I have set out the questions asked by the Commission and the answers given by Mohite in full, because here again Mr. Rege has tried to criticise the Commission by saying that all sorts of undignified suggestions were made to Mohite and that Mohite answered them in a most polite manner. The following passage is typical of the attitude of Mr. Rege on this point :—

“ One cannot, however, forget the fact that all sorts of undignified suggestions were made to Mr. Mohite in the course of his cross-examination which any high placed officer in his position would have been entitled to repel with contempt. Mr. Mohite answered them in a most polite manner as is disclosed by his evidence.”

Which is the suggestion which the Commission's Counsel regards as undignified has not been made clear? The charge, that undignified suggestions were made in the course of the cross-examination is aimed at no other than the Commission. It is pertinent to note that Mr. Rege did not point out that any suggestion put to Mohite was undignified nor did Mr. Ghaswala who was present at the time raise any protest. The Commission's Counsel has remarked that these suggestions could have been repelled with contempt by Mohite. Mr. Rege has given a certificate to Mohite that, on the contrary, that he answered these suggestions with utmost politeness. What is the politeness shown by Mohite in answering the questions which has evoked such fulsome praise from Mr. Rege? To two straight questions Mohite has declined to give replies. One was : “ Could the meeting have been postponed to some other date on a representation made by you to that effect? And the answer is : “ I will not be able to answer this question.” The other question was :—

- “ Q. Do you seriously believe that your request would have been turned down though strongly pressed for and supported by good reasons?  
 A. I am unable to make any guess on that point. I am unable to say whether they would have turned down my request.”

Are these answers indicative of Mohite's politeness or indicative of his defiance or evasion? Further, the questions and answers in regard to the Lions Club dinner, to which I have already made a reference also show how evasive Mohite was. In fact, if the deposition is read as a whole, it will be crystal clear that the remarks made by Mr. Rege have no basis whatsoever. On the other hand, the deposition read as a whole will show that Mohite was handled by the Commission with utmost politeness combined with firmness. On one

occasion, when Mr. Chaswala ridiculed Mohite on his knowledge of English (this has reference to the distinction between the words "continuous" and "continuing"), Mr. Rege said nothing and the Commission gave him protection;

Mohite has admitted that he would not have cancelled his decision to cancel the trip taken on the previous night, had he not received the reassuring news from Prabhakar. I have cited the entire paragraph 12 of Mohite's written statement on this point at an earlier stage in which Mohite has put down the substance of his conversation with Prabhakar which took place at 7 a.m. The Collector informed him about the lake levels which indicated that the level at Panshet had remained constant between 11-15 p.m. on 11th July 1961 and 5-30 a.m. on 12th July 1961 and that at Khadakwasla which had gone down during the same period. On the basis of this information and in view of what Desai had told him that the dam would be saved in case the night passed off peacefully, Mohite considered that the emergency had passed. He added that Prabhakar told him that in view of the information he then had about the condition of the Panshet Dam, he saw no reason why he should cancel going to Bombay on that day. Accordingly, he left for Bombay by the Deccan Queen on 12th July 1961. I have also cited the relevant passage in Prabhakar's written statement in full which is paragraph 34. The relevant portion may be cited even at the cost of repetition :

Prabhakar states :

"I also told him that this level (29-60) at Khadakwasla was the lowest touched since 10th July 1961. The Commissioner said that there was an important conference at Bombay that day concerning finalisation of the Agricultural Programme under the Third Five-Year Plan of Maharashtra State and it was essential for him to attend this conference. He further told me that in view of the situation having improved at Panshet and Khadakwasla, he would be leaving for Bombay that morning by the Deccan Queen. I said that I saw no reason for him to cancel his trip to Bombay in the light of the information I then had."

Prabhakar has attributed a statement to Mohite viz., that Mohite remarked that in view of the situation having improved at Panshet and Khadakwasla, he would be leaving for Bombay that morning by the Deccan Queen. As stated above, the information collected by Prabhakar was the information of the levels prevailing at 1-00 a.m. It has been pointed out that Prabhakar did not try to collect information about the relative levels of the reservoir and the embankment. The information was collected in a mechanical way and passed on in the same way to the Commissioner without understanding the significance of the same. When Prabhakar was questioned on these lines, the replies given by him are typical of his attitude :

"I did not bring to the notice of the Commissioner when he rang me up a little before 7-00 a.m. that I did not have the level of the sinking portion of the dam. I passed on to him such information as I had received till then. I did not suggest to Mohite to contact the Irrigation Officers for better particulars. I did not think it necessary to contact Shri Dandavate before. I consented to Mohite leaving Poona by Deccan Queen that morning. In my opinion, from the messages received at 11-45 p.m. on 11th July 1961 and 6-30 a.m. on 12th July 1961, situation at Panshet had improved. That is why I did not object to Mohite's statement that since the situation at Panshet and Khadakwasla had improved, he would be leaving for Bombay that morning by the Deccan Queen. I would not be able to explain what was the urgency for Mohite to go to Bombay. I saw no reason to ask him to remain in Poona. He is the superior officer and he said that he would go. I saw no reason to ask him to stay in Poona."

(The quotation is not continuous.)

These answers speak for themselves and no further comment is necessary.

I will now cite some passages from Mohite's deposition, which will show that the excuse of improvement of the situation put forward, is lame and unjustified :

" I did not think it necessary to ask for the latest information from Desai or Khursale, because I expected them to inform the Collector if there was anything adverse or worsening of the situation. I did not contact Manerikar because I felt that if he had anything to convey, he would either report it to the Collector or to me. The only information that I got from the Collector in the morning of the 12th related to the water level at Panshet and Khadakwasla. The Collector told me that he had received reports which indicated that the level at Panshet had remained constant between 11-15 p.m. on 11th July 1961 and 5-30 a.m. on 12th July 1961, and that at Khadakwasla had gone down during the same period and also the level at Khadakwasla that morning was the lowest touched throughout the morning of the 10th. The Collector did not convey to me the level of the top of the sinking portion of the dam, nor did he convey to me the difference between the level of water and the level of the sinking portion of the dam. *I agree that the information regarding the level of the dam at the sinking portion and the level of water in the lake is material for assessing the situation of the dam.*

Q. Then why did you not ask that information from the Collector ?

A. The only answer that I can give is that I did not ask that question."

At a later stage, Mohite added that it was not merely from the information given by the Collector that he came to the conclusion that the danger to the dam had passed away, but that he relied upon the statement of Desai on the previous after-noon that the dam would be safe if the night passed off without a mishap. Another factor was that it was a clear bright day and there were no rains in the morning. When asked to state why he did not ask Desai the reason of his opinion that the dam would be safe in case the night passed off without a mishap, Mohite's answer was that he did not raise that question and accepted Desai's opinion without hesitation. Again, at a later stage, Mohite stated :

" Prabhakar did not tell me in the course of his talk at 7-00 a.m. on the 12th that the situation at Panshet had improved. He only mentioned that the water level at Panshet had remained constant from 11-15 p.m. on the 11th to 5-30 a.m. on the 12th and that the level at Khadakwasla had decreased from 30-30 at 9-45 p.m. on the 11th to 29-60 at 5-30 a.m. on 12th July 1961. From these facts, I concluded that the situation at Panshet had improved. I did tell Prabhakar that in view of the fact that the situation at Panshet and Khadakwasla had improved, I would be going to Bombay that morning by the Deccan Queen.

Q. Your appreciation that the situation at Panshet and Khadakwasla had improved was based on the information given to you by Prabhakar about the levels of water at Panshet and Khadakwasla reservoirs. Is that correct ?

A. I say that it was based on two factors :—

(1) The information given by Prabhakar.

(2) The dam stood during the night of the 11th.

Q. How is the fact that the dam did not collapse during night time an indication that the situation at Panshet had improved ?

A. I thought from this that the danger had receded and this, according to me, amounts to improvement in the situation."

Later on again he says :

"I did not make any enquiry with Mr. Desai or Mr. Khursale about the rate of sinking. I did not make an enquiry at the time I left for Bombay as to whether sinking had come to an end."

Then a pertinent question was asked to him by the Commission as follows :—

Q.—Is it your case that when you left for Bombay in the morning of the 12th, you felt that, as Commissioner, you did not have direct responsibility in the matter ?

A.—No. That is not the case."

If Mohite had really been serious to gather up-to-date information about the condition of the dam before taking a final decision for embarking upon a journey to Bombay, he would certainly have made enquiries either with the Superintending Engineer or Manerikar or with Col. Braganza, the head of the Military engineering party at Panshet. It is evident that he was anxious to draw a most favourable conclusion which would justify his departure to Bombay viz. that the situation at Panshet had improved merely from the levels of lake intimated to him by the Collector, which indicated nothing about the condition of the dam. It is significant to note that it is neither the case of the Collector nor of the Commissioner that the entry in Dandavate's jottings viz. "No rain no danger" was brought to the notice of the Collector and by the Collector to the Commissioner and, therefore, the Commissioner felt it safe to embark upon a journey for Bombay. Nor is it the case of the Commissioner that he felt that as Commissioner he did not have any responsibility legally, and the responsibility was that of the Collector and, therefore, it was not necessary for him to remain on the spot. It is clear from the totality of the circumstances set out above that Mohite was determined to go to Bombay at all costs regardless of the condition of the dam and the adequacy or otherwise of the precautionary measures devised by him in the Divisional Commissioner's meeting. I have no doubt in my mind that Mohite was aware of the gravity of the situation. In any case, with ordinary diligence, it was possible for him to post himself with the facts of the case.

I have already attempted to answer the question as to why Mohite should have thought of leaving Poona that morning. I suggested two possible answers to that question : Either he felt that the measures adopted would be sufficient or he felt that the measures were utterly insufficient and, therefore, it would be better to run away from the field on the principle of discretion is the better part of the valour. The first alternative presupposes that Mohite failed to make a correct assessment. The second alternative is still more damaging to Mohite. Whether Mohite's departure to Bombay on that morning was justified or not, it is clear that the attempt made by Rajput with Mohite's knowledge or connivance at correcting the endorsement with a view to show that Mohite did not receive the message at Ex. 96, is not only unjustified but is utterly dishonest.

#### V. Mohite's Role

It was strenuously contended by the Advocate on behalf of the civil authorities as also the Commission's Counsel that Mohite's role in the entire case was that of a co-ordinator and that there was no legal responsibility on Mohite and whatever he did was in the discharge of *self-imposed duty*. (The expression "self-imposed duty" appears in the arguments of the Commission's Counsel). This again is a remarkable case of the meeting of minds between the two Advocates. Both of them have referred to the Bombay Commissioners of Divisions Act and the Government Resolution, R. D., dated 28th February 1958 and have argued that as Commissioner of the Division, Mohite has

neither any powers nor responsibility except that of a co-ordinator. It has already been pointed out that the Advocate on behalf of the civil authorities has gone to the length of contending that neither the Collector nor the D. S. P. nor the Municipal Commissioner is, in any way, legally liable for his acts or omissions in respect of the measures taken by them to meet the flood emergency. I have refused to enter into a discussion of this aspect of the matter, because that discussion does not fall within the purview of a Fact Finding Commission. If none of the officers mentioned above is legally answerable for what he did to meet the flood situation, then it must follow that the Divisional Commissioner is not also legally liable for what he did or for what he did not do. It is, however, argued that the Divisional Commissioner stands on a different footing and even if the Collector is liable, the Commissioner is in no way liable, as he has no legal duty to discharge in the matter of taking steps to meet disasters, such as flood. In the present enquiry we were not dealing with the question of the legal or statutory liability of any of the officers concerned. The question of legal or statutory duty and corresponding liability has reference to culpable negligence of a particular officer. If any officer is charged for having been guilty of culpable negligence, then it would be open to him to plead that there was no legal liability, as no duty was cast on him by any Statute. The special case that has been pleaded on behalf of Mohite is that his role was that of a co-ordinator. It is significant that in the written statement Mohite has not pleaded that he, as Commissioner of the Division, was in no way responsible for any of the measures taken during the floods of 1961. For the first time in the course of the arguments that the question of the legal liability of the Divisional Commissioner has been raised both by the Commission's Counsel and the Advocate for the civil authorities. (The Advocate for the civil authorities has also raised the question about the legal liability of the other officers as well for the first time in the course of his arguments). It is not my intention to discuss all the legal aspects of the liability of Mohite as Divisional Commissioner, nor is it necessary for me as a Fact Finding Commission, to do so. I am referring to a few provisions relied upon by Advocates Mr. Rege and Mr. Murudkar with a view to see whether Mohite could play any other role except that of a co-ordinator and if so the role played by him actually was merely that of a co-ordinator.

Let us first of all see what Mohite has to say on this point in his deposition. His evidence would best be followed if it is set out in the form of questions and answers :—

- “ Q. In view of the fact that the Collector approached you along with the two S. Es. and apprised you of the situation of the Panshet dam and also in view of the fact that you asked the Sub-Area Commander to render military assistance for saving the dam and further in view of the fact that you directed the Collector to convene a meeting, would it not be reasonable to assume that you took the lead in dealing with the flood situation ?
- A. I took initiative in co-ordinating the activities of different agencies who were concerned in taking the necessary precautions and measures.
- Q. Could not this co-ordination been affected by the Collector ?
- A. Yes.
- Q. That is why I am asking you whether it would be correct to say that you took the lead in taking the measures in regard to the situation of the floods ?
- A. Even then I would not admit that I took the lead in the matter.



Q. Shall we say that at least you took the responsibility or in any case shared the responsibility of the Collector ?

A. Yes to the extent of bringing about co-ordination.

Q. Supposing, the Divisional Commissioner, who has a supervisory control over the Collector, is present on the spot and a situation of crisis has developed, would it not be open or even proper for the Commissioner to take up the reins in his own hand and assume responsibility ?

A. The Commissioner has no power to issue directions or instructions to the Collector in the matter of dealing with such a situation. That would be so even if the crisis has no relation to law and order. So far as precautionary measures in respect of a situation similar to a flood situation are concerned, the Commissioner has no power to issue any instructions or directions. I, as Commissioner, can only guide and advise and help the Collector.

Q. Are you maintaining that, so far as the present case is concerned, the role played by you was only that of an adviser or a guide ?

A. I played the role of a co-ordinator and also the role of giving assistance, wherever possible.

Q. Considering that the Collector in the present case was a young and inexperienced officer, did you not think it your duty to take up the reins in your hands and take the necessary measures throughout the crisis ?

A. That would happen only if I had doubted his capacity. Government have appointed him as Collector who is an independent authority to take action on his own."

Again, in answer to questions by Mr. Phadke, the Commissioner stated :

"The role played by me was to co-ordinate the activities of the various departments so far as precautionary measures and other arrangements were concerned. By co-ordination, I mean the assignment of definite tasks to definite authorities and also to explain the sources from which, for instance, the vehicles were to be obtained and the arrangement about the disbursement of the police force and arrangement of the buildings for housing the evacuees was to be made. The Collector could have done all this work."

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I have already referred to the answer given by the Commissioner Mohite to the question put to him, viz. "whether it was his case that he left for Bombay on the morning of the 12th because he felt that as Commissioner he did not have direct responsibility in the matter, to which he replied that that was not his case. The Commission's Counsel has gone to the length of arguing that under the law the Commissioner has no responsibility and no role to play, but that whatever the Commissioner did, in the present case, was out of a sense of "self-imposed" duty.

Let me take a general review of the legal provisions relating to the position of the Divisional Commissioners. Section 3 of the Bombay Commissioners of Divisions Act, 1957, is relevant in this connection. Sub-section (1) of section 3 provides that the enactments specified in column 1 of the Schedule to this Act shall be amended in the manner and to the extent specified in

column 2 for the purpose of constituting offices of Commissioners of Divisions and conferring powers and imposing duties on Commissioners for certain other purposes. Section 6(a) of the Bombay Land Revenue Code, as amended by the Schedule, in effect provides that the Commissioner shall exercise the powers and discharge the duties conferred and imposed on the Commissioners under this Act or under any law for the time being in force and so far as it is consistent therewith and all such other powers or duties of appeal, superintendence and control within their respective Divisions and over the officers subordinate to them as may from time to time be prescribed by the State Government. It also provides that the Commissioners shall subject to the control and the general or special orders of the State Government exercise such powers and discharge such duties as the State Government may confer or impose on them for the purpose of only carrying out the provisions of any law for the time being in force and orders as are consistent therewith. It will thus be clear that the Commissioners shall exercise the powers and discharge duties conferred and imposed upon the Commissioners by the Bombay Land Revenue Code or under any law for the time being in force and also all such other powers as may from time to time be prescribed by the State Government. Clause 4 of Government Resolution, R. D., dated 28th February 1958, in effect provides that the Commissioners of Divisions shall perform the powers, functions and duties mentioned in statements Nos. 1 to 7, subject to any special or general orders which Government may issue in this behalf. Sub-clause (2) of clause (4) provides :

“ The Commissioners shall be the chief controlling authority for their Divisions in all matters concerned with and revenue and shall be responsible for the following :—

(a) Supervision and control over the working of the revenue offices throughout the Division.

(b) Exercise of executive and administrative powers to be delegated by Government or conferred upon them by law.

(c) General inspection of offices of all departments within the Division.

(d) Inspection of local bodies on the lines done by the Director of Local Authorities in the pre-organized State of Bombay.

(e) Co-ordination and supervision of the activities of all Divisional Heads of department with particular reference to planning and development.

(f) Integration of the administrative set up in the incoming area.”

The statement (1) relates to powers delegated to the Commissioners which is an accompaniment to the aforesaid Government Resolution. Statement No. 1 lists the various powers that have been delegated to the Commissioner by the State Government, and in so far as these powers are concerned, the Commissioner exercises the powers of the State Government. It is not necessary to refer to these powers for the purpose of the present discussion. Section 6A of the Schedule to the Bombay Commissioners Divisions Act lays down that the Commissioner shall exercise the powers and discharge the duties conferred and imposed upon him under the Act or under any law for the time being in force and all such other powers or duties of appeals, superintendence and control within their respective jurisdiction and over the officers subordinate to them as may from time to time be prescribed by the State Government. That means that the Commissioner will exercise powers of superintendence and control over the officers subordinate to them in so far as they have been prescribed by the State Government. Sub-clause (2) of clause (4) of the Government Resolution referred to above prescribes the powers of superintendence and control over the officers subordinate to them as contemplated by section 6A mentioned in column No. 2 of the Schedule,

We have, therefore, to analyse sub-clause (2) of clause (4) of the G. R. to find out as to what exactly are the powers conferred upon the Commissioner and duties enjoined upon the Commissioner by the Government. Sub-clause (2) begins by saying, "that the Commissioner shall be the chief controlling authority for his Division in all matters concerned with the land revenue and shall be responsible for the following". Sub-clause (1) speaks of supervision and control over the working of Revenue Offices throughout the Division and sub-clause (e) speaks of co-ordination and supervision of activities of all Divisional Heads of Government with particular reference to planning and development. The remaining clauses need not be considered for the purpose of the present discussion. The main power of the Commissioner, as prescribed by clause (a) is the power of supervision and control over the working of revenue offices throughout the Division. This power is not confined to supervision but extends to control. The Oxford Dictionary gives the meaning of the word "to supervise" as follows :—

"Direct or watch with authority the work or proceedings or progress of."

The meaning of the word "to control", as given in the same dictionary is :

"Dominate, command ; hold in check."

And the meaning of the word "control" as noun is given as "power of directing, command". It is thus clear that under sub-clause (a) of sub-clause (2) of clause 4 of the G. R. the Commissioner has not only powers of supervision but has also powers of control meaning powers of giving directions, commands. That means that the Commissioner can issue dictates or commands. A dictate or a command is a categorical imperative, which has got to be obeyed implicitly. If the Collector has certain powers to exercise or certain duties to discharge, then certainly the Commissioner can command him to discharge those duties and exercise those powers. In his capacity as supervisor also, the Commissioner can watch the activities of the Collector and even give directions. The role of co-ordination referred to in clause (e) has a reference to the activities of the Divisional Heads of Departments with particular reference to planning and development. The work of co-ordination does not come into the picture when steps are being taken to meet the emergency situation like floods. It is not the powers of co-ordination, but it is the power of supervision and control over the working of the Collector. If the argument, that even the Collector has no power or in any case no duties to discharge is accepted, then it would follow that the Commissioner also has no responsibilities to discharge. But if the Collector has duties to discharge, then certainly the Commissioner who is the controlling authority also can assume control and compel the Collector to discharge the duties which he is called upon to discharge. As stated above, we are not considering the question of a legal liability of any particular officer so far as the present proceedings are concerned. Nor are we holding any one responsible for criminal negligence or criminal dereliction of duty. Incidentally, sub-clause (e) of sub-clause (2) of clause 4 of the G. R. referred to above, imposed upon the Commissioner the duty of co-ordination and supervision of the activities of all Divisional Heads of Departments with special reference to planning and development. That means that Mohite as the Commissioner of the Poona Division was the co-ordinating authority so far as the execution of the Khadakwasla project, which included the Panshet dam, is concerned. It is idle to suggest that the officer on whom the responsibility of co-ordination has been fixed by law did not know about the progress of the various items of the Khadakwasla project including the proposal for strengthening of the Khadakwasla dam. It is only in this context that the question of co-ordination would come. Surprisingly, however, the Commissioner has tried to suggest that the role played by him is only that of a co-ordinator. In this case, he was not

neither any powers nor responsibility except that of a co-ordinator. It has already been pointed out that the Advocate on behalf of the civil authorities has gone to the length of contending that neither the Collector nor the D. S. P. nor the Municipal Commissioner is, in any way, legally liable for his acts or omissions in respect of the measures taken by them to meet the flood emergency. I have refused to enter into a discussion of this aspect of the matter, because that discussion does not fall within the purview of a Fact Finding Commission. If none of the officers mentioned above is legally answerable for what he did to meet the flood situation, then it must follow that the Divisional Commissioner is not also legally liable for what he did or for what he did not do. It is, however, argued that the Divisional Commissioner stands on a different footing and even if the Collector is liable, the Commissioner is in no way liable, as he has no legal duty to discharge in the matter of taking steps to meet disasters, such as flood. In the present enquiry we were not dealing with the question of the legal or statutory liability of any of the officers concerned. The question of legal or statutory duty and corresponding liability has reference to culpable negligence of a particular officer. If any officer is charged for having been guilty of culpable negligence, then it would be open to him to plead that there was no legal liability, as no duty was cast on him by any Statute. The special case that has been pleaded on behalf of Mohite is that his role was that of a co-ordinator. It is significant that in the written statement Mohite has not pleaded that he, as Commissioner of the Division, was in no way responsible for any of the measures taken during the floods of 1961. For the first time in the course of the arguments that the question of the legal liability of the Divisional Commissioner has been raised both by the Commission's Counsel and the Advocate for the civil authorities. (The Advocate for the civil authorities has also raised the question about the legal liability of the other officers as well for the first time in the course of his arguments). It is not my intention to discuss all the legal aspects of the liability of Mohite as Divisional Commissioner, nor is it necessary for me as a Fact Finding Commission, to do so. I am referring to a few provisions relied upon by Advocates Mr. Rege and Mr. Murudkar with a view to see whether Mohite could play any other role except that of a co-ordinator and if so the role played by him actually was merely that of a co-ordinator.

Let us first of all see what Mohite has to say on this point in his deposition. His evidence would best be followed if it is set out in the form of questions and answers :—

- “ Q. In view of the fact that the Collector approached you along with the two S. Es. and apprised you of the situation of the Panshet dam and also in view of the fact that you asked the Sub-Area Commander to render military assistance for saving the dam and further in view of the fact that you directed the Collector to convene a meeting, would it not be reasonable to assume that you took the lead in dealing with the flood situation ?
- A. I took initiative in co-ordinating the activities of different agencies who were concerned in taking the necessary precautions and measures.
- Q. Could not this co-ordination been affected by the Collector ?
- A. Yes.
- Q. That is why I am asking you whether it would be correct to say that you took the lead in taking the measures in regard to the situation of the floods ?
- A. Even then I would not admit that I took the lead in the matter.

Q. Shall we say that at least you took the responsibility or in any case shared the responsibility of the Collector ?

A. Yes to the extent of bringing about co-ordination.

Q. Supposing, the Divisional Commissioner, who has a supervisory control over the Collector, is present on the spot and a situation of crisis has developed, would it not be open or even proper for the Commissioner to take up the reins in his own hand and assume responsibility ?

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Again, in answer to questions by Mr. Phadke, the Commissioner stated :

"The role played by me was to co-ordinate the activities of the various departments so far as precautionary measures and other arrangements were concerned. By co-ordination, I mean the assignment of definite tasks to definite authorities and also to explain the sources from which, for instance, the vehicles were to be obtained and the arrangement about the disbursement of the police force and arrangement of the buildings for housing the evacuees was to be made. The Collector could have done all this work."

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co-ordinating the activities of the Heads of Departments with reference to planning and development. Neither the Collector nor the D. S. P. is the Divisional Head of Department, nor were they engaged in any planning or developmental activity. The S. Es. would be the Divisional Heads of Departments, and the Commissioner can exercise powers of co-ordination over the activities of the Superintending Engineers with reference to planning and development.

The question, therefore, that was put to Mohite in his cross-examination by the Commission was : Whether in view of the fact that he decided to convene a meeting for devising precautionary measures regarding the flood arising out of the imminent breach of the Panshet dam, he took the control of the situation in his hands ? And Mohite's reply was that he only took initiative in co-ordinating the activities of different agencies who were concerned in taking necessary precautionary measures. He was forced to admit that this kind of activity which he called 'co-ordination' could also have been effected by the Collector. He still clung to the view that he took the responsibility of bringing about co-ordination. Mohite went so far as to say that even in a situation of crisis the Commissioner has no power to issue directions or instructions to the Collector in the matter of dealing with such situation. If that is correct, then the word 'control' would be devoid of any meaning and significance. Mohite's contention, that he can only guide, advise and help the Collector is belied by the powers of control conferred upon him by sub-clause (a) of sub-clause (2) of Clause 4 of the aforesaid Government Resolution. After realising the mistake in making the statement that the only authority he has is to guide, advise and help the Collector, Mohite resiled from that position and admitted that his role was not of an adviser or a guide but that of a co-ordinator, and of giving assistance wherever possible. Eventually, he was forced to admit that if he found that the Collector was not in a position to control the situation either due to his young age or due to his inexperience he would take the reins in his hands and take necessary measures through the whole of the crisis. I have also referred to Mohite's admission viz., that it is not his case that he owed no responsibility as Divisional Commissioner during the floods of Poona and, therefore, left for Bombay on that fateful mornings of the 12th. I do not think it is necessary to discuss this question any further.

Considering the question from any point of view, Mohite's departure for Bombay on the morning of the 12th was unfortunate, indiscreet and the product of indifference bordering on callousness to the fate of the thousands and thousands of citizens of Poona. It is a matter of ironical coincidence that the overtopping of the dam and Mohite's departure for Bombay were more or less coeval and in that back-ground Mohite's statement that the situation had improved and that is why he thought of leaving for Bombay appears tragic. As the Collector himself has stated in his report at Ex. 438 that the race that was going on between the rate of sinking and the rate of raising the embankment through the whole of the night was lost in the early hours of the morning and the rate of sinking over-stripped and the rate of raising the embankment by dumping the bags. The Collector was conscious of the heroic struggle that was going on at the Panshet dam through the whole of the night against nature and also against the destructive forces that were set afoot in the Panshet dam. Was not the Commissioner aware of the same titanic struggle or rather could he not have, with the exercise of ordinary diligence, become aware of the life and death struggle taking place at Panshet ? It was clear from the beginning that it was a struggle against heavy odds. The sinking had never come to an end. The embankment was being artificially kept above the level of water by stacking bags. Are we to suppose that such high authorities as the Collector and the Commissioner, to whom the



fate of millions of people is entrusted, were not aware of what was going on at Panshet? Could they be regarded as diligent officers, if it is assumed in their favour that they were really ignorant of what was actually going on? The struggle that was going on at Panshet through the whole of the night was a struggle to keep a free-board by dumping bags on the sinking portion of the dam. The struggle succeeded to the extent that the collapse of the dam was deferred at least by 12 hours. It is a piece of astonishing luck for the citizens of Poona that the heroic efforts carried on by the military engineers prevented the collapse of the dam during the night of the 11th. Had the dam collapsed during the night of the 11th, not only the so-called fragile structure of precautionary measures have crumbled to pieces but thousands and thousands of citizens of Poona would have suffered a water-grave without even coming to know what was happening. The situation would have been anomalous to the situation of an imaginary deluge depicted in Indian epics. But for preventing the occurrence of such an incalculable disaster we must thank the the heroic efforts continued through the whole of the night under very adverse conditions by the military engineers. It is unimaginable that such highly placed officers like the Collector and the Commissioner should exhibit an attitude of indifference, apathy and strange aloofness towards such a struggle which had all the potentialities of a supreme tragedy. That is exactly what these officers would have us believe if their stand is to be accepted. Admittedly, none of these officers cared to go to the dam site to see things for himself. None of these officers stirred himself out of his house to see whether warnings were properly given and in proper areas and whether proper arrangements for evacuation etc. were made. The most highly placed among them finds time to attend the dinner in the Lions Club but has no time to take a round in the city, nor has he time to suggest to Prabhakar or advise him that he should undertake such rounds. These officers were sitting in their ivory towers as if the struggle going on at Panshet was a matter of no concern to them and as if the engineers were solely responsible for saving the dam. The theory of panic, which is a peculiar feature of bureaucratic complex, seemed to have paralysed the thinking capacity of these officers and lulled them into inactivity. Everything would be alright if only people are kept away from knowledge of the ugly possibilities of the situation. According to them, ignorance is bliss and it is all to the good of the people, that they are continued in the state of blissfulness. The infection of blissful ignorance has spread even to the brains of these officers who apparently have lulled themselves into the belief that after all, the worst may not happen. The only redeeming feature in the enveloping gloom is the heroic struggle carried on by the military engineers through the whole of the night for keeping the embankment above the level of water by dumping sand bags. This was the only effort that could be done during the night and the rest was left for destiny to decide. Destiny took its hand and the dam collapsed almost with the break of the day on the 12th.

There is an anti-climax to the grim tragedy arising out of the collapse of the dam. Bhalerao wrote out a message at 6-45 a.m. on the 12th (Ex. 329) saying "Lowest portion topped over. Alert all people. Flood expected." This message was addressed to S. E. D. I. C. (II). But the Collector was mentioned as the informee. Unfortunately the operator did not put down this message before 6-55. The message (Ex. 389) was received at Poona at 6-59 by Shinde operator. Shinde (Ex. 462) says that he gave it to Tamhane the head operator and Tamhane says that he informed the substance of the message on phone to S. E. D. I. C. (II) first. Desai says that he received the message at about 7 a.m. At the instance of Desai, Tamhane informed Khursale S. E. D. I. C. (I). According to Tamhane (Ex. 467) he read out the message

to the Collector at 7-15 or so. I cannot understand why Tamhane should have delayed the relaying of the message to the Collector till 7-15 a.m. Prabhakar says that he got this message at 7-20 a.m. But Tamhane says that he read out the message at 7-15 or so. Deccan Queen was to start at 7-25 which was the scheduled time of departure. Was it difficult for Prabhakar to inform Mohite about the tragedy which had over-taken Panshet dam before the train embarked on its journey for Bombay? Prabhakar (Ex. 421) was cross-examined on this point, and this is what he has to say :

“I did not try to contact Mohite after receipt of the news about the overtopping of the Panshet Dam. The departure time of the Deccan Queen was 7-25 a.m. I did not attempt to convey the message to Shri Mohite at the Railway Station because I thought it more important to take steps for evacuation and warning etc. rather than stop Mohite from going to Bombay. I did not send a message to Shri Mohite at Kirkee or Lonavala, nor did I send a car for his return to either to those places because my attention was concentrated more on the measures to be taken..... I did not inform the Commissioner in Bombay about the overtopping of the dam. He learnt it from other sources and then he rang me up.”

(The quotation is not continuous).

I am inclined to think that Prabhakar must have received the message at about 7-00 a.m. There was no reason why the sending of the message should have been deferred to 7-20 as he says it was. Even assuming that he received the message at 7-20, it was still possible for him to inform Mohite about it. It is ridiculous to accept the plea put forward that he considered the taking of steps for giving warnings etc. more important. Prabhakar could have conveyed the message to Mohite at the railway station by sending an emissary or by informing the station master. This would in no way have interfered with Prabhakar taking appropriate steps. Prabhakar is speaking about his more urgent duties, as if he himself would be required to run to the station. This illustrates more vividly than any other circumstance that Prabhakar throughout the crisis behaved in an extremely in different and cavalier way. He never comprehended the gravity of the situation, nor could he realise what steps were necessary to meet the situation. This emphasised the need for the presence of Mohite on the spot. There is another piece of evidence (adduced by the D. S. P. himself) which shows that the message of overtopping was received by Mohite himself on that morning. Bhalerao's message that the lowest portion was topped over was received in the V. H. F. control room on the R/T link, as it was received at the Bhamburda Head-quarters on W/T link. Ex. 1249(17) is the report of R/T operator, S. G. Sawant, submitted on 31st July 1961. In this report, Sawant says (rendered in English) :

“I received a message at 7-18 from the Khadakwasla Wireless Station, that the Panshet dam had breached at 7-10..... Similarly I informed D. S. P., Poona City, Collector, Poona, Divisional Commissioner, Poona, Municipal Commissioner, Poona on phone on my responsibility at 7-20. All these officers personally received these phone messages.”

This report was tendered and admitted in evidence after the 10th August 1962 pursuant to the Commission's order Ex. 923. There was, therefore, no opportunity of putting this statement to Mohite. Had it been put to Mohite, perhaps he would have denied it. But after all the report is a near contemporaneous document and was admitted at the instance of the Advocate on behalf of the civil authorities. That means that the civil authorities, who have put up a joint case want to rely on it. The contents of the report, therefore, must be taken as true. If the contents of the report are true, then it means that Sawant personally informed Mohite about the over-topping of the dam.

In other words, Mohite departed for Bombay, after learning about the overtopping of the dam. Studious attempt has been made to deny any knowledge by Mohite about the overtopping of the dam. Sawant's report lends an entirely new complexion to Mohite's departure for Bombay on the fateful morning. Does this not indicate that he wanted to run away from responsibility ?

## SECTION 19

## MEASURES TAKEN AFTER THE DAM WAS OVERTOPPED

## I. The attempt of the civil authorities to understand the situation

The Panshet dam was overtopped at about 6-30 a.m. on the 12th. The message in regard to the same was sent by Bhalerao at 6-45 a.m. to which a reference has already been made. According to the Collector, he received this message at about 7-20. The Collector in his written statement at paragraph 38 says that he at once telephoned to his Deputy Chitnis at the emergency control room asking him not to leave the control room as he had received the message that the dam had been overtopped. He also asked him to warn everyone and to put into action all the arrangements previously made. Mr. Heble also says that he learnt about this event at about 7-20 from the wireless operator on phone. According to S. B. Kulkarni, the Municipal Commissioner, he got the news that the dam was overtopped at about 7-30 a.m. from some unidentified source. It is now interesting to see what were the reactions of these 3 principal authorities and what measures they devised on receipt of this news.

Prabhakar in his written statement at paragraph 41 says that at about 7-30 he rang up D. S. P. and enquired whether he (the D. S. P.) had received the message about the Panshet dam having breached. The D. S. P. confirmed having received the message and told the Collector that he had immediately taken action and had issued instructions to his staff to warn the people as well as to start evacuation operations. The Collector then rang up the Police Inspector, Poona Rural, and after having informed him about the overtopping of the Panshet dam asked him to arrange to control traffic on the Khadakwasla-Panshet Road in view of the expected floods. The next step which the Collector took was to inform Major Kadar Ahmed, Security Officer, N. D. A., at 7-40 about the overtopping of the Panshet dam. Immediately thereafter he rang up Brig. Bedi, Sub-Area Commander, Poona, and requested him to warn all units on the river banks and also to inform the executive officers of Poona and Kirkee Cantonments about the heavy floods expected. The Collector continued to receive telephone calls from officials and non-officials enquiring whether the Panshet dam had breached. He received also a call from R. D. Kale of Pulachi Wadi who complained that there were not enough people to carry the moveables of the residents in the area of Pulachi Wadi to the trucks and to the places to which they were to be shifted. Kale having requested for some help in that connection the Collector rang up the Deputy Chitnis at the emergency control room to send men to render assistance for the removal of the belongings also. This was at about 8-00 a.m. It was at 8-45 a.m. that the Collector reached the Municipal Corporation Building. I will refer to the Collector's activities after he went to the Corporation building a little later.

In the mean time it is necessary to refer to the reactions of the D. S. P. The D. S. P. states in his written statement at paragraph 19 that when he asked the Home Inspector to warn the inhabitants of the flood threatened areas and to put into operation the scheme drawn up the previous night, he (the Home Inspector) informed him that he (the Home Inspector) had already

arranged to send out the loud-speaker vehicles as also the wireless mobiles for warning the people in the flood threatened areas that the dam had breached and that they should vacate without delay. The Home Inspector also told the D. S. P. that the Police personnel detailed for the Bandobast had already gone into action. He then proceeded to the Motor Transport Section of the Police Headquarters. At that place he examined the transport position and directed the Police Sub-Inspector, Motor Transport, to see that every available vehicle was kept in readiness to move into action as and when necessary. He also directed him to send the second Police vehicle fitted with loud-speaker on a warning round. At the Headquarters he informed the Reserve Police Inspector and two Reserve Sub-Inspectors that the Panshet dam had breached and heavy floods were expected. He, therefore, directed them to follow him to the emergency control room with 75 policemen from the reserve at the Headquarters. The D. S. P. then reached the emergency control room at about 7-40 a.m. He met Home Inspector Kekre, who had arrived there earlier. The Home Inspector informed him that he had directed the officer in charge of the V. H. F. control room to telephone all Police Stations and chowkies to warn people in their jurisdiction that the Panshet dam had breached, and that heavy floods were expected and that they should evacuate immediately to places of safety with their belongings. After giving some more instructions to the Police personnel the D.S.P. took a round of Asha Nagar, Pulachi Wadi, Narayan Peth and Shanwar Peth. After finishing his rounds of the flood threatened areas he returned to the emergency control room at 9-45 a.m. and joined the Collector, the Municipal Commissioner, the Assistant Municipal Commissioner and the City Engineer who had mean while arrived there. Soon afterwards, the Mayor also arrived at the emergency control room.

The Municipal Commissioner, according to his written statement, who learnt about the breach of the Panshet dam at about 7-30 a.m. telephoned to Darp and conveyed to him the news he had received. The Assistant Municipal Commissioner (Special) told Kulkarni that he had already received the message and that he was himself proceeding to the Corporation Office immediately. At about 8-15 he went to the Corporation Office where he met Darp. Some time thereafter he paid a visit to Pulachi Wadi where he noticed that the evacuation was almost completed. While he was at Pulachi Wadi he learnt that the Collector had arrived in the Corporation Building and that he wanted to discuss certain matters with the Municipal Commissioner. The Municipal Commissioner immediately therefore, returned to the Corporation office to meet him.

Before discussing the measures that were set afoot by the various authorities, it is necessary to refer to the talk that took place between Manerikar, the Additional Chief Engineer and the Collector at about 7-20 a.m. The Collector at paragraph 39 of his written statement says that Manerikar informed him on phone that the Panshet dam had overtopped. The Collector informed him that he had already received the message and that the previously arranged programme for warning and evacuating the people had been set in motion. Prabhakar was questioned as to whether he asked Manerikar about the extent of floods and Prabhakar stated that he did not ask Manerikar about the extent of the floods. He added that Manerikar on his own part did not say anything about it. The Collector admitted that he apprised him about the measures of warning and of evacuation taken by the civil authorities. With reference to the talk that took place between the Collector and Manerikar, Manerikar gives a somewhat different version in his written statement—

“The Collector said that he had already received the message and that he would be doing the needful and would be evacuating people in one and a half mile wide belt along the river in the rural area. I expressed the

opinion that likewise the people in Poona urban area should be moved to the localities at high levels."

The passage in Manerikar's statement cited above was put to the Collector and he was asked to say whether that was correct. The Collector stated that he did not mention the distance i. e. one and a half mile wide belt but that he only said that people of the river side villages would be evacuated and so far as Poona area was concerned people living in low lying areas would be evacuated. He admits that Manerikar suggested to him that citizens of Poona living in low lying areas should be evacuated to high levels. Manerikar was examined at a later stage before the Commission and in answer to questions of Ghaswala, Manerikar stated as follows :—

"The Collector mentioned to me on the 12th that he would be evacuating people within a strip of a mile and a half along the river. I understood him to mean that this meant 6 furlongs on each side of the river."

Q. Is it true that the Collector's statement was restricted to the rural area only and not to the City of Poona ?

A. No, that is not true.

My attention is invited to the following sentence at paragraph 16 of my statement :—

"The Collector said that he had already received the message and that he would be doing the needful and would be evacuating people in one and a half mile wide belt along the river in the rural area."

A. That is correct. But the Collector mentioned the rural areas first. I immediately told him that similar action was necessary in the City and I added that the people should be moved to localities at high levels. The Collector did not mention the belt of a mile and a half so far as the City area was concerned. I, however, told him that he should do likewise so far as the city area was concerned. By 'likewise' I meant that people living within a belt of a mile and a half of the river in the City should also be evacuated. I mentioned to the Collector that action similar to the one taken in regard to the Rural area was also called for in the City area and in addition I told him that people should be moved to localities at high levels. I considered the belt of a mile and a half area as adequate in the state of our knowledge. The belt of one mile would also have been adequate for the purpose of precaution and evacuation. This was based on pure and simple guess work and not on any calculations. The Collector did not ask for any explanation of the localities at high levels nor did I offer anyone in addition to the belt."

It is necessary to remember that these answers were got elucidated in cross-examination by the counsel on behalf of the civil authorities. I have already discussed the question about the possibility of Collector telling Desai and Khursale on the previous day that he would be giving warnings within a belt of four furlongs on each side of the river and pointed out that even without any kind of calculations or technical knowledge or hydraulic data it is necessary for an administrator to make some sort of empirical or pragmatic guess about the possible spread of water. If Manerikar's evidence is believed then the Collector made a similar statement to him with this difference that instead of four furlongs on each side he mentioned six furlongs on each side of the river. Although the Collector has denied having made any such statement to Manerikar, it is difficult to disbelieve Manerikar's evidence on this point particularly when we take into account the evidence

of Gadkary and also the fact that at a later stage an attempt was made by Kulkarni and Prabhakar to assess the extent of floods with the aid of maps in the Corporation building in the afternoon of the 12th.

Gadkary who was then Director of Minor Irrigation had gone to the Inspection Bungalow at about 8-40 or so where he met V. B. Manerikar, Additional Chief Engineer, N. V. Khursale, S. V. Desai, R. V. Tambe and M. G. Padhye, all Superintending Engineers. At about 9-15 a.m. Prabhakar rang up Manerikar and had some talk with him. Gadkary asked Manerikar to request Prabhakar to hold on for some time so that he could talk to Prabhakar. Accordingly Gadkary talked to Prabhakar on phone and in the course of this conversation with Prabhakar the latter told Gadkary, that warning to people in about a mile and a half strip along the Mutha river was given. Prabhakar admitted that Manerikar rang him up at 9-15 and that at the same time he had a talk with Gadkary. He has of course denied that he told Gadkary that warnings were given to localities within a belt of a mile and a half from the bank of the Mutha river. This is what Prabhakar says in his deposition :

“ At about 9-15 a. m., I rang up Manerikar from the control room. At that time, Gadkary, Director of Minor Irrigation, also spoke on the phone.

My attention is invited to the sentence in written statement of Gadkary:—

‘ He (Prabhakar) also told me that warning was given in about a mile and a half strip along the Mutha river. As regards the Poona City area he stated that he had made arrangements for evacuation of people in the banks.’

I did not mention the distance of a mile and a half but I told Gadkary exactly the same thing as I told Manerikar.”

Assuming that Manerikar was an interested witness the question remains as to why Gadkary should attribute to Prabhakar a false statement, namely, that he had already given warnings to localities within a belt of a mile and a half of the Mutha river. It is significant that although the Commission's counsel asked questions to Gadkary on this point no questions were asked whatsoever by the counsel on behalf of the civil authorities challenging the veracity of Gadkary. This is what Gadkary says in answer to questions by the Commission's counsel :

“ I had a talk with Prabhakar on the morning of the 12th only as an old friend and had asked him whether he had given warning and taken necessary steps. I did not, therefore, discuss the matter further when he told me that warnings were given in a strip of a mile and a half and arrangements for evacuation of the people on the banks were made.”

No reason whatsoever has been shown as to why a man of Gadkary's position should come forward to attribute a false statement to Prabhakar. It is necessary to remember that at the time when Gadkary gave evidence, he had retired from service. He had no interest or stake in the present inquiry. If Gadkary's evidence is believed, then it throws a flood of light on the following two important questions, namely, whether it is likely that Prabhakar would tell Desai and Khursale on the morning of the 11th that he would warn within a belt of one mile (i.e. four furlongs on each side of the river), and whether he would tell Manerikar soon after the breach of the dam that he had made arrangements for the warnings being given within a belt of a mile and a half. As the evidence discloses, Prabhakar had not carried out these promises and that the assurances given by him amounted to merely empty boasts.

In the same context, I would take up the question of the admitted attempts made by Prabhakar, and Kulkarni, in assessing the extent of floods after the receipt of Bhalerao's message at 10-00 a.m. saying that people should be evacuated to highest places. We are told that at that time Kulkarni and Prabhakar made frantic efforts to obtain a contour map. This is what Prabhakar says :

"I and the Municipal Commissioner wanted to ascertain the areas which were likely to be affected by the floods and for that purpose we tried to obtain a contour map from Corporation office. This attempt was made after the message was received from Panshet that schools and colleges should be closed and people evacuated to higher places. At that time the water had just started entering Shivaji Akhada. Although I knew that we could not ascertain the extent of the floods or the levels to which they would rise in the City, still we were trying to make some efforts on an arbitrary basis. It was a blind guess. Though the engineers had told me that it was not possible to estimate the extent of floods I attempted to do it. It was a first impulse which came uppermost in my mind."

Prabhakar's statement that it was the first impulse which prompted him to make the attempt can hardly be believed as true. Again, it is Prabhakar's case that the engineers had told him that it was basically impossible to estimate the extent of floods. Had there been any substance in this statement, it is impossible to imagine that Prabhakar would attempt to do the impossible. The attempt which was admittedly made by Prabhakar with the help of Kulkarni to estimate the extent of the floods belies all his previous statements, that he did not tell the engineers that he would give warning within a belt of four furlongs on each side of the river and that engineers had told him that no estimate about the extent was possible even approximately. Kulkarni in his written statement has stated :

"The map was consulted and efforts were made to estimate how far the water would spread in the City."

It is significant that although Kulkarni, a layman, was trying to make an attempt of estimating the extent of floods with the aid of another layman, Prabhakar, Kulkarni did not think it worthwhile to ask City Engineer, Yadav, about the extent of floods.

In the same context, I would like to refer to Office Order issued by the Municipal Commissioner on 12th July 1961, Ex. 653. The Office Order as rendered in English runs thus :

"The level of water in the Khadakwasla Dam had arisen far higher than the usual one. Therefore there is a possibility of very big floods coming to Mutha river which water is likely to spread to a distance of a mile and a half to two miles on both sides of the river. It is, therefore, necessary that citizens residing within these areas should move to safe places."

The second paragraph of this Office Order is not necessary. The draft of this order is at Ex. 652. The relevant portion runs thus :

"Owing to the unprecedented rise in the level of Khadakwasla Dam, it is apprehended that the level of Mutha river in the Poona City will affect the area within one and a half mile to two miles on either side of the river. It has, therefore, become necessary that the persons who will be affected should take proper care to shift to the areas which are safe."

This draft was prepared by Deputy Engineer, Jathar, under instructions from Kulkarni. Kulkarni in his deposition says that the estimate that water would spread in the town to a distance of a mile and a half to two miles on the sides of the river must have been made by Jathar. He has tried to evade the issue by saying that he did not pay much attention to this para. All the same, he



was forced to admit that he must be deemed to have accepted this estimate since it forms part of the Office Order issued by him. He also admitted that he did try to find as to what would be the extent of water in the City of Poona. He did consult others with a view to find out the extent and various estimates were placed before him and there was no definite data. He added that one estimate put it as one mile on either side of the river and another put it as one and a half mile to two miles on either side of the river. It appears clear from Kulkarni's evidence that the wording of the English draft prepared by Jathar is not quite accurate and the estimate was that water would spread to a belt of one and a half mile to two miles in areas adjoining to the river. Jathar who is the author of the draft at Ex. 652 was cross-examined on this point and he says that he prepared the draft as per the instructions given to him by the Municipal Commissioner. He of course added that it was his guess that water would spread to a distance of one and a half mile to two miles on either side of the river. He, however, explains that he mentioned as large a area as possible extending almost upto hills. He also stated that the draft was approved by the Municipal Commissioner. Incidentally it may be pointed out that neither the draft Ex. 652 nor the order Ex. 653 make any mention of Panshet dam having breached. It may also be pointed out that this fact, namely, that in the order issued for closing the schools it was mentioned that the areas that were likely to be affected would be one mile on either side of the river, has been referred to in the report Ex. 643, to which a reference has already been made.

Two conclusions emerge from the above discussion :—

- (1) Attempts were made from time to time to make a rough estimate about the extent of the floods. The Collector had at the beginning contemplated to give warnings within a belt of one mile round about the Mutha river. After the breach of the Panshet dam he revised his estimate and thought that water would spread to a belt of a mile and a half and accordingly told Manerikar and Gadkary that he had given warnings to localities within that belt. As a result of Bhalerao's message that people should evacuated to highest places the estimate was again revised and at any rate S. B. Kulkarni felt that water would spread within a belt of 2 to 3 miles round about Mutha river.
- (2) Even till 10-00 a.m. when the order for the closure of the schools was given and people were warned that water was likely to spread within a belt of two miles, an attempt was made to suppress the fact that the Panshet dam had breached. Even at that late stage all that was stated was that the level of water in the Khadakwasla reservoir had risen far beyond the normal level.

## II. Warning and Evacuation

The principal and important measures that were required to be taken after the dam was overtopped related to warnings and evacuation. So far as these two measures are concerned the Collector on his own admission has not played any role at all. He says that on learning about the overtopping of the dam he asked Deputy Chitnis to warn everyone and to put into action all the arrangements previously made. He further says that at 7-30 a.m. he rang up the D. S. P. and enquired of him whether he had received the message about the breach of the Panshet dam. The D. S. P. replied to him saying that he had received the message to that effect and had already issued instructions to his staff to warn the people as well as to start evacuation operations. In his deposition the Collector admitted that he did not ask the D. S. P. to make arrangements for giving warnings regarding the breach of the Panshet dam. That being the case we have mainly to deal with the evidence of the D. S. P.

and his subordinate officers to see what kind of warnings were given, to what areas they were given and through which agencies. We have also to turn to their evidence to see what steps were taken for evacuating the flood affected or flood threatened persons. It is difficult to discuss these questions in their chronological order of the events. As a matter of fact these two questions, namely, warning and evacuation are inter-mixed with one another. It will, therefore, be convenient to deal with them side by side.

### III. Nature of the scheme chalked out and put into action—its adequacy

It is Heble's case that he prepared a programme of evacuation on the previous night after he went home from the Divisional Commissioner's meeting. Heble in his written statement at paragraph 10 has outlined the scheme in the following words :—

“ After the meeting the Home Inspector and I proceeded to my residence where I drew up the following scheme to meet the flood situation :—

#### *Operational Sectors :—*

- (1) Mangalwar Peth including Bhimnagar and Gadi Tal areas.
- (2) Kasba Peth including Kumbhar Ves and Kagdi Pura.
- (3) Shanwar Peth including Amriteshwar, Apte Ghat and Nene Ghat.
- (4) Narayan Peth including Sitaphal Bag.
- (5) Asha Nagar.
- (6) Pulachi Wadi.

Police Inspector R. K. Jadhav of Pharaskhana Police Station was detailed to be in charge of sectors 1 and 2. Police Inspector, I. M. Risaldar of Vishrambag Police Station in charge of sectors 3 and 4, and Police Inspector, T. H. Karande of the Local Crime Branch in charge of sectors 5 and 6.”

According to Heble, page 2 of the Ex. 538 contains in miniature form the scheme chalked out by him. Page 2 mentions certain localities and the Police Stations under whose jurisdiction these localities lie. It also mentions the number of school buildings which have been allotted against these localities. As against Pulachi Wadi (in Shivaji Nagar) which is under Deccan Gymkhana Police Station, School No. 19 is mentioned. As against Sitaphal Bag and Amriteshwar in Narayan Peth, School No. 75 in Dhangar Ali is shown. Against Asha Nagar which is under the jurisdiction of Deccan Gymkhana Police Station, School No.'s 61 and 14 and varandah of the Congress Bhavan have been set out. As against Bhim Pura which is shown as falling under the Pharaskhana Police Station in Mangalwar Peth, School Nos. 12 and 15 have been mentioned. Then mention is made of 7 trucks and 8 jeeps against which the following entry appears :—

“ Agricultural College, M. T. Section.”

I have already discussed the question as to whether there is any other documentary evidence to say that more than 15 vehicles were detailed on the night of the 11th for the purpose of evacuation. I have not so far referred to a very important piece of evidence in this connection and that is the report submitted by Kekre to the D. S. P. on 31st July 1961, Ex. 607. In that report, Kekre who was also present at the Divisional Commissioner's meeting stated :—

“ Accordingly, it was decided to keep 20 policemen each from the above 3 police stations and 60 policemen from the Headquarters standing to, at Municipal Corporation together with Police Inspectors of Pharaskhana, Vishrambag, and Deccan Gymkhana and 6 Sub-Inspectors, 5 trucks to be supplied by the Corporation and 3 jeeps by Agriculture Department. Further Public Health Department to keep 8 other vehicles ready. The meeting decided to warn the public in the Bhimnagar, Gadi Tal in Mangalwar, Amriteshwar and nearby localities in Shanwar and Sitaphal

Colony and nearby localities in Narayan Peth and Asha Nagar, that Panshet dam was in danger and, therefore, there may be bigger floods than 1958 and that the public in this area should be ready to evacuate within 2 hours notice.....

The localities mentioned above and Kumbhar Ves and Kasba would be divided into six sections each under one Sub-Inspector who was to be given 20 men. The Police Inspectors, Pharaskahana, Vishrambag and Police Inspector, L. C. I. B. (as Police Inspector, Deccan Gymkhana was sick) would supervise 2 sections in the jurisdiction of each Police Station. Out of the 120 men to be used for this purpose, Headquarters would provide 60 and each station 20 men."

The report makes it clear that the localities to which warnings were decided to be given were the six localities which were divided into 3 operational sectors for the purpose of evacuation. It is equally clear that the vehicles that were arranged for the purpose of evacuation numbered 16 in all. This contemporaneous document corroborates the entries in the other contemporaneous documents referred to above, namely, Ex. 538 (jottings of Heble) and Ex. 439 (jottings of Dandvate). Kekre in his deposition stated that the sectors mentioned on page 1 of Ex. 538 is a mere restatement of what Darp stated in the meeting and do not represent the decisions of the meeting. In his deposition Kekre stated :

"The area was divided by the D. S. P. into 6 sectors, 2 sectors to be under the charge of 1 Inspector. Two Sub-Inspectors were to work under each Inspector with 20 men. The Sub-Inspectors, Inspectors and Policemen were all stationed in the Corporation building. The Inspectors were instructed by me to move into action into respective localities as soon as the warning was received that the dam had breached. I gave the following instructions to my Inspectors at the Vishrambag Wada. I had given them the numbers of the schools buildings. I gave numbers of about 6 or 8 buildings. I asked them to verify from the Corporation authorities whether the buildings were vacant and were ready for housing people..... I know that the work of evacuation was entrusted to the Police as well as the Municipal authorities. It was necessary that the Police Officers and Municipal Officers should meet together to discuss a common plan of evacuation. But nothing of the kind was done. Trucks were necessary for the purpose of evacuation. Somebody from the Corporation was to distribute the trucks. I do not know his name. I had told Inspectors that wherever they required the trucks they should contact the control room. No one was placed in charge of the control room as such.

*Q.* Would this, then, be not a case of a control room without a controller ?

*A.* That would be so.

The trucks were not divided localitiwise, that is, according to the population of the localities. Each Inspector was left to determine his own needs. Somebody from the control room was to comply with the demand.

*Q.* Do you consider this to be a satisfactory arrangement ? Would it not lead to chaos ?

*A.* According to me, it is a satisfactory arrangement. There would be no chaos.

I had given no instructions to the persons sitting in the control room as to who is to distribute the trucks and how. To my knowledge, no one has given any such instructions. Some time after receiving information about the breach of the dam on the morning of the 12th, I contacted Sub-Inspector Naik of the Traffic Branch and told him to give warnings in the same localities in which warnings were given on the previous night with

the aid of the same loudspeaker van. I gave information to all the Police Stations in the City through the V. H. F. control room. I mentioned the wording of the warning to the V. H. F. control room. The wording was like this :

*The dam has breached, big floods are expected, people living on the banks should evacuate to safer places."*

It is evident from Kekre's replies, as also the replies given by the District Superintendent of Police, that the scheme that was prepared on the previous night for evacuation of flood affected people was put into operation on the morning of the 12th. It is nobody's case that any fresh scheme was prepared on the morning of the 12th. As pointed out above, the localities have been mentioned in Ex. 538 and these localities were divided under 3 operational units. These localities are no other than the traditional low lying localities. It is to these localities that warnings were to be given on the night of the 11th and it is to these localities that warnings were to be given after the breach of the Panshet dam. Furthermore, the number of trucks that were kept ready to operate in these localities varied between 13 to 16. The figure of 23 mentioned in Sawant's report may not be quite accurate in the face of the contemporaneous records discussed above or it may be that in the course of the night some more trucks came to the Corporation building and Sawant included those trucks in his estimate. Whatever that may be, it is quite clear that the preparations were utterly inadequate to the requirements of the situation and the only claim that is put forward by the District Superintendent of Police is that the scheme prepared on the previous night was brought into operation on the morning of the 12th after the breach.

Heble in his written statement at paragraph 28 states that at about 8-00 a.m., the police personnel on duty in the various operational areas numbered 10 Police Inspectors, 10 Police Sub-Inspectors and 545 policemen, as mentioned in Appendix 1 of his written statement. In his cross-examination, Heble has explained the scheme of evacuation as follows :—

"As soon as the information of the breach of the dam came, the police were to move round and give warnings to the people about the breach. Four Inspectors, 13 Sub-Inspectors and 382 policemen were to carry out this work on the night of the 11th. Three Inspectors, 6 Sub-Inspectors and 120 policemen were stationed at the Corporation building. The rest of the police force was kept in reserve in or near the flood-threatened areas. These policemen were stationed in the Police Stations and chowkies. None of them were moving in the streets. They were all kept in reserved. The people living in those localities were to be taken out either with their consent or by use of force, if necessary. Invalids, cripples, old men and children were to be taken in vehicles and the rest were to be evacuated on foot to the places assigned for the purpose. The vehicles were to be called out by the officers giving the message to the emergency control room as and when necessary. 55 vehicles were deemed sufficient for this purpose on the basis of available data. We could not estimate the number that would be required to be evacuated..... The number would be bigger than the number affected by the floods of 1958. I knew which were the low-lying areas, but I did not know the number of the people residing in the low-lying areas, even approximately. Darp mentioned to me that the population of the low-lying areas that were affected in the floods of 1958 was 6500. This is recorded in Ex. 593. According to me there were also other low-lying areas which were in our contemplation. I could not, however, estimate the number of people residing in those areas, as we did not have sufficient data for knowing this. I mean that the

census figures were not available at that moment in respect of these localities. I had not allotted specific vehicles nor decided the number of vehicles which should be allotted to each of the low-lying areas. The allotment was left to each of the Inspectors according to their requirements. I do not think that the Inspectors had allotted any vehicles localitiwise..... I agree that in order to carry out evacuation operations successfully, it is necessary to know the number of population of the affected areas."

Again, at a later stage, he stated :

"I did not gather the impression at the meeting that the night of the 11th was a crucial night from the point of preparation for rescue operations. I did not gather the impression from the discussions in the meeting that the situation at Panshet dam was serious. At the same time, we considered that the situation was such that *some preparations were necessary*."

Q. Would you say that serious and well organised preparations were not considered necessary for the night ?

A. According to me, well-organised preparations were made and the preparations were sufficient for the situation as we understood it.

Q. Were you making preparations to meet the contingency of the dam bursting on the night of the 11th ?

A. Yes."

The answers given by Heble are riddled with contradictions. On the one hand, he says that he did not consider the night of the 11th as crucial ; on the other hand he says that he was making preparations to meet the contingency of the dam bursting on the night. Again he says that he considered that the situation was such that some preparations were necessary.

As regards the preparations for rescue operations and evacuation operation Heble says :

"I assert that we had made preparations for rescue and evacuation in respect of the population of not only the low-lying areas mentioned by me, but also all other low-lying areas. I agree that rescue operations during night time are more difficult and require a greater planning. I would also agree that large number of people would be under the spell of sleep during night time. I, however, expected at least one member from each household to remain awake because the warning was already given. We contemplated the giving of the second warning as soon as we received the news about the breach of the dam.....The strength of the police force in the City of Poona is about 2500. According to me, this force is sufficient and adequate not only under the normal conditions, but also to meet abnormal conditions.....About 1350 policemen would be available for emergent duties."

According to him, 1300 policemen would be adequate for evacuation, guarding properties, dealing with gundas, guarding roads and bridges, preventing traffic jam and patrolling and cordoning of the areas. According to Heble, 1350 policemen could be mobilised for emergent duties. He never says that he had mobilised that number. When asked further questions on this point, Heble admits :

"On the 11th, I had no idea that so many policemen would be required for meeting the situation. On the night of the 11th about 382 policemen were employed and this number was considered sufficient."

It is necessary to remember that this figure of 382 included what Heble calls 'policemen kept in reserve'.

With regard to the nature of the organisation for evacuation and rescue, Heble admitted that the organisation must be so complete that it can be put in operation within a space of 2 to 4 hours. He, however, added that according to him the organisational set up was complete but a certain amount of flexibility was left, meaning that more men and more vehicles could be drawn from all Police Stations and Headquarters. He admitted that if evacuation is to take place during night time the following factors are important :—

“(1) dark night, (2) possibility of failure of electric supply (3) difficulty of access, (4) panicky atmosphere.”

He, however, asserted that all these 4 factors were taken into account in making preparations for rescue. Immediately thereafter he had to admit that no alternative lighting arrangements were made to meet the contingency of the failure of electric supply nor were any instructions given for making preparations for rescuing the people marooned as a result of floods. He also admitted that in the matter of evacuation it was necessary to acquaint people with such basic information as (1) the places where the evacuees were proposed to be accommodated, (2) transport arrangements, (3) clear warning mentioning the time when floods would visit, (4) the names of officers should be clearly announced so that the flood affected people should know whom to approach in the event of need for help of any kind, required by the evacuees and to fix some responsible leader or a committee of citizens in that locality. Heble has the audacity to say that the appointment of a citizens' committee was not considered necessary. So far as the other items are concerned the matters were left to the staff on duty. He admitted that the help of fire brigade would be useful and necessary for rescuing people from high and inaccessible places. He, however, asserted that he expected the Municipal authorities to move the fire brigade. He admitted that he was not aware of any first aid posts having been established anywhere in the low-lying areas. These admissions clearly supported the proposition made by me earlier, namely, that the preparations made for evacuation were insufficient and unsatisfactory.

Even Heble had to admit that on the night of the 11th he had not made any preparations for evacuation of the people that night be affected by the floods due to the breach of the Khadakwasla dam. He explained that that was because he had already prepared for much larger population meaning a population 2 to 3 times the population affected by the floods of 1958, i.e. 6500. He further stated that he fixed the proportion of policemen required for evacuation operations on the basis of information given by Darp as to how many men were engaged during the floods of 1958. He was, however, forced to admit that Darp did not give the number of persons engaged for evacuation operations during the floods of 1958. He finally explained that he arrived at the figure of 120 policemen as he calculated that 20 policemen will be sufficient for each area and there were six areas. Incidentally this confirms the conclusion arrived at by me earlier. That it is only the six lowlying areas which were in contemplation both for the purpose of giving warnings and also for making preparations about the evacuation. No estimate of the people that may be involved in the evacuation preparations was ever attempted to be made.

#### WARNINGS

It is the case for the Police Department that on the 12th, warnings were given on three occasions : (1) Soon after the breach. (2) After 10 a.m. when Bhalerao's message that the breach and widened was received, and (3) at 3 p.m. after the breach of the Khadakwasla Dam.

As regards the warnings the most important point to be noted is that the warning was not broadcast from the All India Radio on the morning of the 12th even after the dam had breached. Questioned on this point, Heble

reluctantly conceded that one of the ways of giving warning is to broadcast them from the All India Radio, and the other is to put posters during cinema shows. He however denied that this is a better way of giving warnings.

(a) *First Warning*

Let us now see how the warnings were given on the morning of the 12th, to which areas and what information was contained in these warnings. Heble in his written statement says that the Home Inspector informed him that he had directed the officer in charge of the V.H.F. control room to telephone all Police Stations and chowkies to warn the people in their jurisdiction that the Panshet dam had breached and that very heavy floods were expected and that they should evacuate immediately to places of safety with their belongings. In answer to questions by the Commission, Heble stated :

“ I arranged to send out the mobile loud-speaker vans and wireless vans to broadcast the warning about the breach of the Panshet dam. The message was also communicated to each Police Station on telephone by the telephone broadcast. ”

Pausing here for a moment, it is necessary to remember that Heble has made no mention of the fact that he sent loud-speaker vans and wireless vans to broadcast the warnings regarding the breach of the Panshet dam in his written statement nor has Kekre mentioned this fact in his report Ex. 607. All that Kekre says in his report is that he sent traffic loud-speaker jeeps for conveying the warnings and he makes no mention of wireless vans at all. Heble further says that he himself fixed up the text of the warning and he repeated the text from his memory in his deposition. The text according to him was as follows:—

“ The Panshet dam had breached, very heavy floods were expected and that the people in the low-lying areas should be evacuated to safe places. ”

Under the impact of further cross-examination by the Commission he had to change his front and had to make the following admission :—

“ I now say that I did not personally give instructions to the vans nor did I personally dictate the text of the warning. I told the Home Inspector on phone all about what I have stated above, i. e. to give instructions to the vans and also the text of the warning. I asked the Home Inspector to arrange to convey the warning to the public through the agencies mentioned above. I gave the details to the Home Inspector as to how the warnings were to be given. I did not dictate the contents of the warning to the Home Inspector on phone. I gave him general lines indicated above on which the warnings should be based. ”

Heble began by making a tall claim that he fixed up the text and gave instructions that warning should be given according to this text. He was, however, forced to admit that he did not himself give instructions nor did he himself fix up the text but he gave a general indication to the Home Inspector as to how the warnings were to be conveyed. Kekre in his deposition however gives entirely a different version. He claims that it was he who asked the Sub-Inspector, Naik, of the Traffic Branch to issue warnings and it was he who gave the text of the warning on his own. He makes no mention of any conversation having taken place between him and Heble on this point. This is what Kekre says in answer to questions in cross-examination :

“ Some time after receiving the information about the breach of the dam on the morning of the 12th I contacted Sub-Inspector Naik of the Traffic Branch and told him to give warnings in the same localities in which warnings were given on the previous night with the aid of the same loud-speaker van. I gave information to all the Police Stations in the City through the V. H. F.,

control room. I mentioned the wording of the warning to the V. H. F. control room. The wording was like this :

‘The dam is breached, big floods are expected, people living on the banks should evacuate to safer places.’”

In view of the conflict in the version of Heble and that of Kekre, it is difficult to rely on the evidence of either in regard to warnings alleged to have been given on that morning.

According to Heble, till 9-00 or 9-30 a.m. on the 12th, 1 jeep fitted with loud-speaker and 2 wireless mobiles were utilised for giving warnings and after 9-30 another vehicle fitted with loud-speaker and a third wireless mobile were also used. He asserts that the first 3 vehicles must have commenced the work of giving warnings from 8-00 a.m. The log books of the respective vehicles are at Exs. 541, 542, 543 and 544. (in regard to vehicles No. BML. 4771, B.Y.P. 2851, BMC. 2968 and BMC. 2762, respectively). It is significant to note that not only these log books do not mention the text of the warning but they do not even mention the fact that these vehicles were utilised for the purpose of giving warnings. Exs. 541, 542 and 543 merely mention that the vehicles were engaged in doing Bandobast duty during the floods. When asked to offer his explanation for the entry, Heble came forward with a bold and extraordinary explanation :—

“That is a failure on the part of the driver to make a correct entry.”

Ex. 544 refers to the fact that the vehicle was utilised for giving warning of danger. This entry shows that the vehicle was utilised at least for the purpose of giving warnings. Even then it is of no help to the Police Department because it does not refer to the fact of the breach of the dam nor calls upon people to evacuate immediately. Heble has admitted that beyond Exs. 541, 542, 543 and 544 there is no documentary evidence to show that the vehicles were used for giving warnings. He also admitted that these vehicles were working till the evening of the 12th and they must have done other work besides giving warning in the course of the day. A specific suggestion was put to him by the Commission's counsel to the effect that the warning did not state that the dam had breached but simply stated that heavy floods were expected. Heble of course denied that suggestion.

While I am dealing with Heble's evidence, I may refer incidentally to his claim for having kept a large contingent of police force in reserve, though that is not strictly germane to the question of warning which is under discussion here.

Asked to explain as to what he meant by a large contingent of police force being kept in reserve, Heble replied :

“These policemen were stationed in the Police Stations and chowkies.

None of the policemen was moving in the streets. They were all kept in reserve.

Q. Does it mean that these people were mobilised and ordered to remain in the Police Stations and chowkies ?

A. They were ordered in 3 Police Stations and 6 or 7 chowkies. The normal strength at night of policemen in a Police Station would be about 5 or 6 and in a chowkey one or two.

The strength from 3 Police Stations and 6 or 7 chowkies would come to about 24 or 25. Additional men from other Police Stations were called and directed to remain in the Police Stations and chowkies. There are no written orders to indicate this mobilisation. The orders were oral. I have made no enquiries as to whether there is written record showing the movement of the police. No policeman was moved from one Police Station to another on the night of the 11th.”



These answers expose the hollow claim made by Heble, namely, a large contingent was mobilised or kept in reserve. The sum and substance of Heble's statement is that the work of evacuation was started with a very small number of policemen (not more than 120 even if their case is accepted) and that this work was started in the 6 low-lying areas and with the aid of trucks varying from 13 to 16.

Resuming the thread of discussion regarding working, it is the case for the D. S. P. that in addition to announcements made from loud-speakers mounted on jeeps on the morning of the 12th for conveying warning to the people, the V. H. F. control room gave news and instructions to the Police Stations and chowkies from the morning of the 12th till the evening.

The reports of the officer in charge of the V. H. F. control room who was responsible for conveying messages to the Police Stations and chowkies from time to time as also the reports from the officers in charge of the Police Stations and chowkies have been produced in the present case. It will be interesting to examine the contents of these reports as also the Khabri reports of the various Police Stations and chowkies. [Ex. 604=Ex. 1249 (1)], is the report of Dange of Kirkee Police Station who was put in charge of the V. H. F. control room from 0900 hrs. on 12th July 1961 upto 0920 hrs. on 13th July 1961. This report is submitted on the 31st July 1961 to the D. S. P. At paragraph 2, Dange says :

“After taking over the charge, I used to contact the authorities and was informing them regarding the rise of water in Khadakwasla dam, its overflow, and was also informing the public who were phoning me about the breakage of the Panshet dam and the danger. On that day morning, lot of persons visited the control room enquiring about the breakage of the Panshet dam and the situation of the flood to whom I gave the correct picture.”

The third paragraph is more important and says what kind of warnings were conveyed to the public. Apart from the answers given by Dange to persons making enquiries on phone etc., Dange says :

*“I was instructing the river side wireless mobiles to make the propoganda that the river-side public should vacate their houses quickly as the water was increasing and heavy floods expected.”*

It is necessary to remember here that according to Heble, warnings were being conveyed by these wireless mobiles. It appears that two mobile vans were not fitted with loudspeakers. Dange says that all that he instructed the wireless mobiles to do was to propogate to the river side public that they should vacate their houses quickly as water was increasing and heavy floods expected. It is clear that he never mentioned to them that they should tell the people that the dam had breached. Even in the broadcast messages that he gave to the Police Stations at 10-15 a.m. (i.e. after the receipt of Bhalerao's message that people should be evacuated to highest places) Dange says that he informed them to inform the public about the likely heavy floods. In the same context it is necessary to refer to the report of Paranje (Ex. 606) who was in charge of the V. H. F. control room on the 11th and 12th morning till 9-00 a.m. It was Paranje who received the news about the breach of the Panshet dam. Paranje of course in his report states that he informed the Police Stations and chowkies that the dam had breached and asked them to instruct the people to shift to safe places. This report is submitted on 31st July 1961. To similar effect is the report of Inamdar (Ex. 609) who was also sitting in the V. H. F. control room along with Paranje and Inamdar says that information about the bursting of the Panshet dam was conveyed to all the Police Stations and they were asked to give warnings to the people to shift to safer

places. The Khabri reports, however, do not support these statements. The Khabri reports are contemporaneous records and therefore must be given greater importance than the reports that were submitted later. These reports were called for by the D. S. P. for a specific purpose to which I will make some reference at a later stage. It is also necessary to remember that these reports were submitted after Shri Bavdekar was appointed as one man Commission to enquire into the Panshet disaster. Ex. 545 is a Khabri report of the Pharaskhana Police Station. As regards the information received at 7-45 a.m. on the 12th, the reports, as rendered in English, reads thus :

“The informer Inamdar, Head Constable, Control Room. He telephoned at 7-45 saying that the Panshet dam had burst at 7-10 and therefore *bandobast* should be done within our jurisdiction.”

There is no mention whatsoever that a warning in regard to breach of the Panshet dam should be conveyed to the people by the Police Stations concerned nor does it say that evacuation operation should be started by the Pharaskhana Police Station as such, nor is there any intimation given for calling reserve police, if any. Ex. 546 is the extract of the Khabri report from the Vishrambag Police Station. Rendered in English it runs thus :

“Constable Inamdar informed from the control room at 8-00 a.m. that the Panshet dam breached at 7-10 and that there were likely to be losses on the river side as a result of increase in water and, therefore, *bandobast* should be kept within the jurisdiction.”

Here also there is no mention that warning should be conveyed to the people nor is there any mention about evacuation. Ex. 547 is an extract of the Khabri report from the Kirkee Police Station. It says that Paranje informed from control room at 7-45 that the dam had breached and that 20 persons from the Kirkee Police Station should be kept as reserve. Here also there is no mention that warning should be conveyed to the People or arrangements for evacuation to be made. Ex. 548 is an extract of the Khabri report of the Bund Garden Police Station. It says that Inamdar informed at 8-00 a.m. that the Panshet dam burst at 7-10 and there was a likelihood of danger to the people living on the banks of the river and, therefore, *bandobast* should be made. Same comments apply to the entry in this extract. Exs. 549, 550, 551 and 552 are the extracts of the Khabri reports of the Lashkar Police Station, Military Lines Police Station, Khadak Police Station and Bhamburda Police Headquarters respectively. The Khabri reports from these Police Stations do not contain any entry regarding the message about the burst of the Panshet dam having been broadcast from the V. H. F. control room. That means that no information was given to the aforesaid Police Stations about the burst of the Panshet dam.

The most significant circumstance to be noted is the absence of information to the Headquarters. It is an admitted fact that a parade of the Police Officers was held from 6-30 to 8-30 a.m. on the 12th. Of course Heble says that it was held with a depleted complement. At the same time he admitted that he could not say how many officers and policemen attended the parade. Had the message about the breach of Panshet dam been received in the Headquarters it is most improbable that the parade would be continued according to the usual course till 8-30 a.m. In view of the absence of entries about the message from the V. H. F. control room in the four Police Stations mentioned above it is not possible to accept the word of Paranje on trust when he says that he conveyed information to all the Police Stations in the City of Poona about the breach of the dam, with instructions that they should warn the people. Once doubt is cast on the statement of Paranje on an important particular, the

shadow of that doubt is bound to pursue him in other respects. It would, therefore, not be legitimate to accept Paranje's statement, namely, that he gave instructions to the mobile vans stating that Panshet dam had burst and instructing them to inform the people accordingly and asking them to evacuate to safer places.

The reports of the constables, who were in charge of the wireless mobiles on the morning of the 12th are at Exs. 1249(2), 1249(3), 1249(4), 1249(5), 1249(6), 1249(7), 1249(14) and 1249(15). Most of these reports are submitted on the 31st July 1961. It is clear from the reports of Khomane, Rane, Ghorpade, Bhumkar, Varule, Patel and Manke that all that they were instructed to do was to inform river side people about the breach of the Panshet dam. That being the case, the question as to in which localities these warnings were conveyed pales into insignificance. Even if these warnings are conveyed in the localities in which it is stated that they were conveyed, the significance will be lost on people who were not living on the river side or who would not consider themselves as living on the river side. Secondly the question arises as to how far the statements of these constables can be accepted as true in view of what is contained in the report of M. G. Bhorde, Ex. 1249(7). He too was sitting in one of the wireless mobile van on that morning, BMC 2968 (the log book of which is at Ex. 543). He says (as rendered in English) :

"I moved in the wireless motor from 7-00 a.m. to 12-00 noon and from 5-00 p.m. to 11-00 p.m. along with Headconstable Lalate.....I started doing the wireless patrolling duty from 7-00 a.m. in the areas on the banks of the river, that is to say, Narayan Peth, Shanwar Peth, Nava Pul, Tophakhana, Bhamburda, Sambhaji Park Road, Pulachi Wadi, Lakdi Pul etc. I told all of them that the level of increased water was 33-50, 35, 36. After the information about the last level was received, I consulted my superior officers and then started telling people loudly that they should take out and shift their articles. Thereafter, I told them that the Panshet dam had breached."

It appears from the context that the information about the breach of the Panshet dam was received by Bhorde a little before 10-45, because he says that after he informed people about the breach of the Panshet dam he went to the Corporation building at 10-45. This indicates that information about the breach of the Panshet dam was conveyed to the people after the receipt of Bhalerao's message at about 10-00 saying that 500 ft. section of the dam had breached and that schools and colleges should be closed and people evacuated to the highest places. I will point out presently that the citizens who have been examined in this case and who have also submitted their statements, by and large, do not support the case put forward on behalf of the civil authorities, namely, that soon after the breach of the Panshet dam clear warnings were given to the citizens stating that the dam had breached and asking people to shift to places of safety.

Another serious defect about the warnings alleged to have been given on the morning of the 12th is that these so called warnings do not mention within what time the water from Panshet reservoir was likely to visit the City of Poona and to what areas the water might spread. Nor does it say that people must immediately vacate their residences and shift to safer places. It appears to me clear that civil authorities were taken almost unawares and the news of the overtopping of the Panshet dam must have taken them by surprise. They do not appear to have fore-warned themselves about the impending disaster and not having fore-warned themselves they have failed to fore-arm themselves in such a way as to meet the emergency.

(b) *Second Warning*

Before discussing the merits of the reports of the Police Officers including the 302 police constables, it is necessary to discuss the evidence that has been led about what are called the second and third warnings. In his written statement at paragraph 33 Heble says :

“ At about 10-00 a.m., a telephone message was received from the Police wireless station to the effect that 500 feet of the Panshet dam had been washed away, that all schools and colleges be closed and that people should be warned to shift to the highest places. Immediately on receiving this message, the following steps were taken :—

(a) A fresh warning on the above lines was given through police vehicles, fitted with loudspeakers and wireless in the following areas : Gadi Tal, Mangalwar Peth, Kasba Peth, Shaniwar Peth, Narayan Peth, Navi Peth Pulachi Wadi, Asha Nagar, Karve Road, Prabhat Road, Erandavana and Deccan Gymkhana areas and river side areas in the jurisdiction of the Bund Garden Kirkee and Military Lines Police Stations.

(b) A telephone broadcast was given to all Police Stations and chowkies informing them of the latest situation, directing them to warn through their staff the people in their jurisdiction on the above lines and to assist in their evacuation and further to send reinforcement into the flood threatened areas at the rate of not less than 25 policemen from each Police Station.

(c) In view of the traffic situation having become very difficult with the approaching floods the Police Inspector Administration (Traffic) was directed to see that a sufficient strength of the traffic police were pressed into service, wherever necessary.

(d) I got in touch with the Home Guards Headquarters and requested them to send to the assistance of the police as many Home Guards as they could muster.”

In his deposition, Heble, says :

“ On receipt of this message, (Bhalerao's message at 10-00 a.m.), I directed that warning should be given in further localities. *These additional areas were* : Deccan Gymkhana, Jangli Maharaj Road, Karve Road, Prabhat Road and Ghole Road also.”

This implies that the first warning about the breach was not given to these areas. It is extremely doubtful whether warnings were really given to these areas at least after the receipt of Bhalerao's message at 10-00 a.m. Heble says that these areas have been mentioned in the log book of the 5th vehicle used for giving warnings which he had not produced, at the proper time and which he sought to produce at a later stage.

According to Heble this warning in the above localities must have been given some time after 10-30 a.m. Heble has tried to give the text of this warning issued after Bhalerao's message as follows :

“ Khadakwasla dam was overflowing, the situation was very grave, and people should go to safe places.”

According to Heble, this warning was conveyed through the same vehicles and the warning was also broadcast by telephone broadcast system. He added that Sub-Inspector in charge of the V. H. F. control room conveyed the message sent by Bhalerao on telephone broadcast to other officers. As Heble was conscious that the Khabri reports did not incorporate the substance of Bhalerao's message, he hastened to add :

“ At the same time, he also conveyed the substance of another message received from Khadakwasla that the Khadakwasla dam was overflowing and the situation was grave.”

According to him, the warning was intended to cover both aspects, namely, Khadakwasla dam was overflowing (as was conveyed by the message from Khadakwasla) and people should go to highest places (as was conveyed by Bhalerao's in his message). Heble then began to prevaricate and stated that the Home Inspector was sitting by his side all the time but he was not sure whether it was he himself or the Home Inspector who conveyed the text of the warning to the various police officers. Ex. 545 to 552 are the extracts from the Khabri books of the Pharaskhana, Vishrambag, Kirkee, Bund Garden, Lashkar, Military Lines, Khadak and Bhamburda Police Headquarters Police Stations, respectively. When Heble's attention was drawn to the contents of these Khabri reports he admitted that the message sent from the control room by Inspector Dange did not make specific reference to the warning conveyed in the message by Bhalerao.

While reading the Khabri reports at Ex. 545 to 552 another point that strikes the attention immediately and which has some significance in this case is this : As regards the entry based on the information conveyed at 7-45 a.m. (to which a reference has already been made) all that is stated is that bandobast should be maintained within the respective jurisdictions. It is only at the time of conveying second message at 10-00 a.m. that it is stated that attempt should be made to evacuate people and render them necessary assistance. This clearly shows that evacuation was contemplated, except perhaps in the 6 low-lying areas only after the receipt of the second message. Even here the evacuation that is contemplated is in river side areas within the respective jurisdictions of the Police Stations. The distinction suggested above receives confirmation from Dange's report at Ex. 604 to which a reference has already been made, as also from Bhorde's report [Ex. 1249 (7)]. As regards the first message conveyed by Paranje at 7-45 a.m. all that is stated is people should be warned, that heavy floods were expected and they should vacate their houses. It is only while conveying the second message at 10-15 a.m. that Dange informed the Police Stations that they should take steps in evacuating the people and render necessary assistance to them in that connection.

It may now be mentioned that an attempt was made to produce the log book of the 5th vehicle on the 31st of May 1962. Heble in his cross-examination on the 10th stated that he had not produced the log book of the 5th vehicle used for giving warning after the message of 10-00 a.m. The cross-examination of the witness went on for the whole of the 11th. The cross-examination was not completed on that day and had to be adjourned to the 31st of May and it was on this adjourned day that the log book has been produced before the Commission. Actually, this log book ought to have been produced at an earlier stage as per the orders issued by the Government. It is clear from the application asking for permission to produce the log book, that as early as January 1962 Heble had made a discovery that the log book in question had not been produced before the Commission. It is clear from the replies given by him that he realised the importance of this log book. It is also clear from the application that he secured the log book in the second week of January 1962. It was, therefore, his clear duty to have produced the log book soon after he had secured the same or at any rate on the 10th when questions were asked to him or at least on the 11th the next day after the questions were asked to him. Heble asserted in the application that he consulted his counsel and the counsel advised him that the log book should be tendered at the time of his evidence. I do not think that any counsel would give such an advice. The counsel has not put in any affidavit in support of such a statement. The reasons given by Heble for allowing production of the document are completely unsatisfactory. I have also gone through the log book and I find that the

entries are not free from suspicion. I have written an exhaustive order on this point and it is not necessary to repeat all that I have stated therein. That order is below Ex. 612.

(c) *Third Warning*

According to Heble the third warning was given after the message was received that Khadakwasla dam had breached. According to him the message about the breach of the Khadakwasla dam was received at 3-00 p.m. Actually the dam had breached at 2-05 p.m. Heble has stated in his written statement at paragraph 75 that he received the message about the breach of the Khadakwasla dam at 3-00 p.m. from the emergency control room. It may be pointed out at this stage that the reports of Dange who was in charge of the V. H. F. control room and Sawant who was the R. T. Operator in the same room [*vide* Ex. 1249(1)=Ex. 604 and Ex. 1249(17)] do not support Heble's statement. Bedi in his written statement asserts that the Collector rang him up at 2-15 hours to say that the Khadakwasla dam had breached. Bedi was cross-examined by Ghawasla on this point and Bedi gave assertive replies as follows :—

“ I do not accept the suggestion put to me that the message given by the Collector of Poona about the breach of the Khadakwasla dam was given to me some time after 3-00 p.m. In view of the fact that the message about the Khadakwasla dam having been washed out has been noted as having been received at 2-15 p.m., I can positively say that, that message must have been received at 2-15 p.m.”

It is the case for the civil authorities that on receipt of this message, Messrs. Anand and Gadkary were consulted about the consequences of the breach. Heble in his written statement at paragraph 75 says :

“ They (the engineers) stated that the first serious rise as a result of the breach in the Khadakwasla dam would be felt in Poona in about an hour's time, that there would perhaps be a further rise of 5 to 10 feet in the flood level. Immediately on this, I had a broadcast issued to all the wireless mobiles with the object of issuing warnings along these lines to the residents of the areas likely to be affected by this fresh rise in the flood. Similarly, as many Police Stations and chowkies as could be contacted on the telephone were apprised of the breach of the Khadakwasla dam with the object of having the warning repeated in their respective jurisdictions. In addition, the loudspeaker vehicles were again sent round to warn the inhabitants of the areas which were threatened by the new floods.”

Heble in his deposition stated :

“ the text of the third warning if I remember well was as follows :—

‘ Khadakwasla dam was breached, and there will be further rise of 10 feet in the water level. This flood will reach Poona within an hour's time.’ ”

According to him, the text is noted in the log book of the V. H. F. control room (Ex. 553). The entry shows that the rise of 10 feet in the river water would take place within half an hour. It further states that warning should be given to the people living in the areas where the water had entered. I fail to understand what useful purpose such a warning would serve when the warning was confined to the areas where the water had actually entered. The statement in para. 75 of Heble's written statement is belied from the contents of what, according to Heble, is the authoritative text of the warning.

I may refer to a very significant circumstance as regards the third warning. The Vishrambag Police Station Khabri report makes no mention of the third warning at all. This suggests that the information about the breach of the Khadakwasla dam was not conveyed to the Vishrambag Police Station on

the 12th at all. It appears that the floods in Poona were so heavy after 3-00 p.m. that it was difficult for the vehicles to move in the areas in which warnings could be usefully given on the basis of the third message

*(d) The trucks and the police personnel utilised for evacuation.*

Let us now try to find out as to how many vehicles were actually used for the purpose of evacuation on the 12th. It is significant that Heble has submitted no statement showing the number of vehicles used for evacuation on the 12th. He admitted that he had produced no such statement. He tried to explain away the absence of any such statement by saying that the log books of the police vehicles show the details regarding the work done by them. When asked to say whether he had produced log books he had to admit that he had not produced all the log books. He also admitted that he would not be able to say how many vehicles stationed on the night of the 11th near the Corporation building were used on the 12th for any purpose including evacuation. He added that he saw some of the vehicles actually in operation in Pulachi Wadi. (It may be mentioned that the only evacuation operation which Heble has witnessed in the course of his rounds was in Pulachi Wadi where only 2 trucks have been used according to the evidence adduced in the case.) Heble was closely questioned on the vehicles and he says, he saw vehicles in operation and this is what he has to say :

"I could identify them (i.e. vehicles) because they had markings, I have stated in para. 19 of my written statement that I asked the Home Inspector to put into operation the scheme drawn up the previous night. By scheme I mean the plan, the only record of which that I prepared is at Ex. 538. I won't call Ex. 538 by itself as a scheme or a plan of evacuation. It is, however, a record covering the essential points of the scheme. I have jotted some points at Ex. 538 which according to me, form the crux of the scheme."

That takes me to the Appendix 1(a) showing deployment of police personnel on 11th July 1961, 12th July 1961 and 13th July 1961. According to this statement, the number of police force deployed on the 12th comes to 13 Police Inspectors, 34 Sub-Inspectors and 1,275 policemen. According to Heble's statement, it was after the receipt of Bhalerao's message at 10-00 a.m. that some more police personnel came to be deployed and at paragraph 34 he says that the number of policemen deployed at this stage was 870 in addition to 12 Police Inspectors, and 28 Police Sub-Inspectors. Heble was cross-examined as to how this statement came to be prepared by him and his answers are :

"I myself prepared the statement with the help of the Inspectors and the staff which had taken part in the evacuation operations. The statement (A), Appendix II, is prepared on the basis of the oral information given to me by the Police and also the statements which these officers had prepared and brought with them. The officers had prepared the statements about the same time at which the statement (A) and the written statements were prepared. Statement (A) was prepared a few days before filing of the written statement. The officers had prepared the statements from their own memories and also on the information gathered by them from their subordinates. The time as mentioned in these statements shows the starting point of the evacuation, but does not mention the termination point nor any intermediate points of time. The claim of my department is that the number of persons mentioned in the statement relates to those who have left the places at the instance of the police. Most of these persons made their own arrangements and did not use the vehicles. All that I can say is that 22 police vehicles were used for various duties including evacuation on the 12th. I cannot, however, say how many vehicles were exclusively

used for the purpose of evacuation. The statement does not cover the cases of those persons who left the places on their own without the help of or at the instance of the police. About 75,000 to 80,000 persons may have left their houses on their own without any kind of assistance from the police and not even at the instance of the police. The statement (A) refers to the people evacuated by the Police Department. I did not come across any Municipal authorities or staff engaged in evacuation operations. Our scheme contemplated that the evacuation was to be carried out by us and the Municipal authorities. There was no discussion between the Police authorities and the Municipal authorities at any time regarding the plan of evacuation. No areas were allotted or distributed between the two departments. Subsequently I came to know that the Municipal authorities did carry on evacuation operation independently. I again say that they assisted the police in evacuation."

Heble has not explained as to when and how such a large contingent of police force came to be mobilised nor has he explained as to at what time such a big force came into operation. It is impossible to believe that such a large force could have been mobilised by Heble for actual operation in a few hours time. If at all such a large number of people came to be deployed in the evacuation or in any other operations, that may be perhaps by the close of the day. At this stage, it is interesting to note that the number of policemen who have submitted reports to their superior authorities which have been produced before the Commission is only 302. This number includes constables and Head constables. In addition to the above we have the reports of 9 Police Inspectors and 10 Police Sub-Inspectors who speak about having done some sort of flood duty. It is not the case for the civil authorities that there were any more reports which have not been produced before the Commission. I had already made an order that all the reports that were produced before the Commission should be exhibited without any evidence having been led for proving them. It is very easy now for Heble to say that he orally consulted the constables and prepared statement (A) on the basis of information given by them. If such a large contingent had really been deployed, the diaries would certainly show that these persons had done some kind of duty during the 12th. Heble has admitted that he prepared the statement at 1(A) with the help of Inspectors and the staff which had taken part in the evacuation operations. He added that this statement was prepared on the oral information given to him by the police and on the basis of the statements which were recorded by these officers, which statements were brought to him. That means that statement 1(A) is based on 302 reports that were taken from the policemen by the officers which were eventually submitted to Heble. It is impossible to believe that Heble would question the other 973 policemen besides 302 who had already submitted their reports. Nor is it imaginable that these constables were questioned by the officers but they were not asked to submit reports. No explanation is forth-coming as to why reports from 973 persons were not taken nor placed before the Commission, if taken. The statement 1(A) is a supreme instance of bluff and bravado which are being attributed by the Advocate on behalf of the civil authorities to Chaturvedi.

*(e) Arrangements for accommodation of the flood affected persons*

Let us now deal with another allied aspect of evacuation, that is to say, what arrangements were made for accommodating the flood affected victims. It is the case for the civil authorities that it was decided in the Divisional Commissioner's meeting that all the primary school buildings in the City of Poona should be reserved for accommodating the refugees. It is an admitted fact that there are about 100 primary schools in the City run by the Corporation



It appears that before 11th, six schools were kept reserved for housing the victims of the floods (*vide* Ex. 625) which are a recurring feature in the City of Poona. It is contended that in view of the apprehension that the floods in 1961 would be bigger than the floods of 1958 in case the Panshet dam breached, it was considered necessary to make arrangements for accommodating the refugees on a larger scale and that is why it was decided that all the school buildings in the City of Poona should be reserved for accommodating the refugees. Let us now see how far this decision was implemented and as a matter of fact how many schools were kept open and what arrangements made for receiving the refugees in these buildings. Ex. 629 is the report of M. R. Vedpathak, Chief Encroachment Officer, Municipal Corporation, dated 14th July 1961. He says that at about 8-30 p.m. on 11th, he along with Head Clerk, Padve, went on a motor bicycle to the house of Mr. Kale, the Administrative Officer, School Board, and told him that it may be necessary that all the municipal schools are taken possession of for the purpose of the Panshet dam (probably it means Panshet disaster). Ex. 631 is the report of Y. J. Padve, Head Clerk, Assistant Municipal Commissioner (Special). In his report at Ex. 631 he reiterates Vedpathak's statement. It appears from Padve's statement that the two had gone to the house of Kale at about 9-30 p.m. It is clear from these two reports that all that Kale was told was that it *may* become necessary to take possession of school buildings in the City of Poona. These reports do not suggest that the idea was to take possession of all the school buildings nor do they suggest that any more school buildings other than those already reserved, were actually reserved for housing the refugees. Let us now turn to the report of Kale, the Administrative Officer, which is at Ex. 632. Kale begins by saying that Padve and Vedpathak conveyed the direction of the Assistant Municipal Commissioner (Special) to the effect that *more school buildings than those that were already allotted on the 10th of July would most probably be required to meet the high flood danger*. This completely exposes the falsity of the theory that it was decided that all the school buildings were to be reserved for housing the refugees. It is clear from Kale's report that the idea of Darp was that some more school buildings perhaps would be necessary to meet the flood danger. Kale further says that he assured Padve and Vedpathak that arrangements would be kept ready to make school buildings available "*if the need arises*". This was the only action that was taken on the night of the 11th.

Turning to the question as to how many buildings were actually utilised on the 12th for housing the refugees, I find from Kale's report Ex. 632 that 22 school buildings were actually made available for accommodating the flood-stricken people. It is significant to note that Kale says that these school buildings were made available when there were high floods due to the bursting of the Panshet dam. This suggests that 22 school buildings must have been made available some time after 10-00 or 10-30. In order to get over the difficulty created by Kale's report Ex. 632, Darp in his deposition has the audacity to go to the extent of saying that the expression "*more school buildings*" appearing in Kale's report is inaccurate. The wording should have been all the school buildings. He was forced to admit that although all the school buildings were kept ready, all of them were not occupied but only some of them were occupied. It is not clear what is meant by saying that all the school buildings were kept ready. Nobody knows who had kept them ready and on what date and at what time. Is there at least reliable evidence to show that 22 school buildings were kept ready for housing the refugees? Now if these school buildings are kept ready then somebody would be kept incharge of these buildings so that he would be in a position to receive the refugees and make arrangements for them. At least the Headmasters would

be put in charge of the respective school buildings. Darp had to admit that no person was kept in charge of receiving evacuees in these school buildings. Darp had also to concede that all that is meant by keeping the school buildings ready was that the doors of the school buildings were kept open so that the refugees could enter those buildings according to their own whims or conveniences. He admitted that there was no police officer kept in charge of these refugees centres, nor any municipal officer. When he was asked to explain what he meant by evacuation he said :

“By evacuation I mean that a shelter was provided for the flood affected persons. The evacuees remained in the school buildings for several days after the floods. From 13th onwards food was given to them regularly every day. Government provided the food.”

This shows clearly that at any rate on the 12th no arrangements for distributing food to these victims was made. If 22 or any other number of school buildings was really reserved and kept ready and actually these buildings were occupied by the refugees we should expect some documentary evidence in that connection. We should at least expect a register being maintained in each of these schools showing the names of the persons who were kept in these buildings and also other details such as how many days each of the refugees stayed there and for how many days he received food in that centre. Darp had to admit that he did not visit any of these centres because according to him all the arrangements were taken over by the Divisional Commissioner and the Government.

It is an essential part of any arrangement for evacuation that provision is made for sheltering the victims. Was any thought given to this vital aspect either by the D. S. P. or by the Collector ? Heble in his deposition stated :

“I cannot say who was in charge of the various buildings for receiving the evacuees. I understand that some arrangements were made by the Corporation authorities. That was the responsibility of the Corporation and not of the Police. The responsibility of the Police was to take the refugees to the buildings and no more. I again say that it was not necessary for the Police to take the refugees to the respective places but their responsibility was to guide them, i.e. to mention the places to which they were expected to go. I came to know that some responsible member of the Municipal staff was kept in charge of each centre. I gathered this information in the course of discussion with the Municipal Commissioner or Mr. Darp. I do not remember how many days after the floods. I have not put this information on record. I had no talks either with Darp or with any other Municipal officer regarding the evacuation on the 12th. I met Darp in the control room in the Corporation building on the morning of the 12th. I did not ask him whether he had carried out decisions arrived at in the meeting of the previous day. I am not aware of any record having been kept in the building in regard to the arrival of the refugees. No arrangements, according to my information, were made for feeding them on the 12th. Many continued and some more persons also came to the camp a little later. From the 13th onwards, arrangements were made to feed these people. The Commissioner and the Collector were looking after the arrangements of feeding the people. I do not know whether any register has been maintained of persons who lived in these camps and were fed by Government agencies. I did not enquire from Darp either on the 11th or on the 12th as to which school buildings were earmarked for receiving the refugees. So far, I have made no enquiries as to whether all the schools started their work on the 12th according to the normal practice. I am not in a position to accept or to deny the assertion that all the schools started their work according to usual practice on the 12th. I can neither accept nor deny the suggestion

now put to me that school No. 19 in Dhangar Ali in Narayan Peth started its work in the normal course nor whether the boys got stranded on the first floor as a result of the floods and required to be evacuated. I have made no enquiries in that respect so far. I visited parts of Shanwar Peth, parts of Narayan Peth, parts of Kasba Peth and part of Mangalwar peth before these areas were cut off as a result of submergence of three bridges before 9-30 a.m. I did pass by some of the school buildings. I did not notice whether they or any of them was under lock."

(Note.—The quotation is not continuous).

Heble has admitted that it is the responsibility of the Police Department to guide the refugees to the various centres of shelter. It is necessary to note that neither in the warnings alleged to have been announced on the night of the 11th nor in any of the 3 warnings alleged to have been announced on the 12th, mention has been made of the centres of shelter for different localities. There is not even a general reference to these centres in the warnings alleged to have been issued. The warning at Ex. 427 says that people should get ready to move to safe places with their belongings within 2 hours. The warning does not explain within 2 hours of what event. It is suggested by some witnesses that within 2 hours means within 2 hours of the warning to be given after the actual breach. If this is so, then, at least the warning issued after the breach of the dam should say clearly that people should immediately leave their places and go to places reserved for them. Heble says that he learnt either from the Municipal Commissioner or from Darp that some responsible members of the Municipal staff were kept in charge of each of the centres. I have already referred to Darp's admission wherein he says that no one was kept in charge of any of the centres. Municipal Commissioner, Kulkarni, does not refer to this aspect of the matter at all. Heble's statement therefore, that he came to know that some responsible member of the Municipal staff was kept in charge of each centre and that he gathered the information in the course of discussion either with the Municipal Commissioner or Darp, is either a bluff or invention. It is surprising that Heble should make himself bold to say that he has made no enquiries as to whether the boys in a school in Dhangar Ali were stranded on the first floor as a result of the onrush of floods in the building. The reports of some of the Police constables submitted to him show that the boys and also some evacuees were marooned in the building of a school in Dhangar Ali, Narayan Peth. And, yet, Heble has the audacity to say that Appendix 2(A) (work done by constables for evacuation) was prepared by him on the basis of the enquiries made by him. This illustrates how irresponsibly Heble has given his evidence before the Commission in this enquiry.

The evidence given by Home Inspector, Kekre, will throw a flood of light upon the attitude of the officials on this aspect of the matter. Kekre says :

"It never occurred to me that in case a large number of evacuees were given shelter in public buildings it might be necessary to make arrangements for giving them food. The D.S.P. never discussed this question with me at any time. It did not occur to me that I should apply my mind to the question as to whether there were proper lighting arrangements in these public buildings. My experience is that very often lights fail in Poona in the damp and cloudy weather. The question as to whether the schools were open or had remained closed on the 12th was left to be considered by the Police Inspectors. I do not know whether the school buildings were kept in charge of responsible persons. I again say that I know nothing about it even today."

(Note.—The quotation is not continuous)

It is clear from this that nobody applied his mind to the question as to whether the schools were opened on the 12th and as to who should be in charge of these school buildings. Nobody again applied his mind as to what arrangements for food should be made for the flood victims who were expected to be housed in the school buildings.

The fact that there was no clear guidance to the refugees as to where they should go for shelter becomes clear from the astonishing admissions made by Pharate, Additional Deputy Collector, in answer to questions in cross-examination. He said that a large number of citizens came to the Collector's office compound for shelter. He admitted that some people did enter the Collector's building. He also admitted that some of them were uttering angry words and were asking the authorities to make arrangements about the future rehabilitation. In making this admission, Pharate, confessed that people were using angry words. He also admitted that people were saying in anger that they had lost everything and they were saying this out of desperation. Pharate proceeded to say that he had made arrangements for supplying food to the persons who had taken shelter in Morarji Gokuldas Dharmshala, Moledina Hall and at the Railway Station. That shows that people had gone to the Morarji Gokuldas Dharmshala, Moledina Hall and the Railway station on their own. This suggests that there was none to guide these people to the centres of shelter. This evidence throws considerable doubt upon the case put forward on behalf of the civil authorities, namely, that proper arrangements were made for accommodating the refugees and guiding them to the centres of shelter. Pharate finally admitted that refugees were allowed to stay in the Collector's office, Sassoon Hospital, Moledina Hall and Morarji Gokuldas Dharmshala.

The evidence of Shirole, the Ex-Mayor of the Municipal Corporation, throws a good deal of light upon this aspect of the civil authorities' case. In answer to questions in cross-examination, Shirole says :

"About 3000 to 4000 people from Shivaji Nagar gaonthan had to go out for shelter on the 12th night. Their arrangements for shelter and food were made by the villagers. I did not see any Municipal authorities or officers in these localities nor any Government or Police officials. The arrangement for food etc., was made by the villagers on their own for a continuous period of 15 days. Thereafter, i.e. 3 to 4 days later, Government supplied some grains."

The conclusions that emerge from the above discussion are :—

(1) After the news about the breach of Panshet dam was received, instructions were issued to carry on Bandobast work in the river side areas, i.e., the traditional low-lying areas.

(2) More areas were contemplated after the receipt of Bhalerao's message, saying that people should be evacuated to highest places.

(3) Neither the civil authorities nor the Municipal authorities rendered any kind of help to the citizens in the matter of evacuation.

(4) According to Heble the number of trucks employed on the 12th was 22. The log books of these vehicles have not been produced. The evidence of the police officers suggest that at its most 3 or 4 trucks belonging to the police department were utilised for the purpose of evacuation and that also in the traditional low-lying areas.

(5) No Police officer gave any guidance to the refugees to go to any particular places for shelter, nor there is any reliable evidence to support the tall claim that 22 school buildings were utilised for the occupation of the refugees on the 12th. In any case there is nothing to suggest that these school buildings were kept ready for occupation by the evacuees. Admittedly nobody was kept in charge of these school buildings. It does not appear

that any instructions had been given to the Headmasters that these buildings would be utilised for the purpose of evacuation. Most of these schools appear to have opened at the usual hour according to normal practice. It may be that some refugees did enter these buildings for shelter. It may be that some of them came to be occupied by the refugees before the evening of the 12th. That does not mean that the refugees were systematically evacuated much less that they were afforded shelter in the school buildings.

(6) No arrangement for feeding these refugees was made at any rate on the 12th.

(7) Admittedly, thousands and thousands of citizens left their places on their own and occupied such places as were available to them. At least one Dharmashala was occupied by the refugees. Some refugees had entered the Collector's compound and even the office building. There were others who had gone to the Railway Station for shelter. The admitted fact that as many as 75000 to 80000 people evacuated on their own without even any kind of suggestion from the Police, establishes that there was no organised plan of evacuation, and people were left to their fates. As a matter of fact, the authorities were unprepared and were caught napping. It was impossible to organise evacuation operations on such a vast scale without pre-planning and prior organisation.

(8) I am not suggesting that so far as the activities of the Police on the 12th are concerned, the Police did not do what could be done in the circumstances of the case. Individual Police officers do appear to have done what they considered to be possible to be done in the circumstances of the case. The gravamen of my charge against the civil authorities is that they did not properly comprehend the situation and did not try to apply their mind seriously to the problems arising in case any of the ugly possibilities materialised. That there was no proper planning nor organisation either for the purpose of rescue or for evacuation and what is worse is that there were no proper warnings given either on the night of the 11th or even on the morning of the 12th.

(f) *Warning by individual Policeman (as per the reports)*

I now propose to take up the evidence in the form of reports submitted by the Police Officers in support of the work done by them on the 12th, i.e. warning given and steps for evacuation taken. Ex. 1252 is the report submitted by S. S. Naik, Sub-Inspector, of the City Traffic, Poona. In this report he has mentioned not only the work done by him in regard to warnings but he has mentioned the work done by him in regard to evacuation. The most important point to be noted is that the time of the warnings has not been mentioned. We cannot make out, therefrom, as to at what time warnings were given in each of these localities. Time is the essence of the matter, so far as warnings are concerned. It may be that the areas of warnings went on being increased as the water went on spreading to more and more areas. The preamble of this report is very important. It says :

"At about 7-30 a.m. the Home Inspector informed me on the phone that a portion of the Panshet had been washed away and there would be terrific floods in the City of Poona. He asked me to give warnings with the aid of loudspeaker jeep for remaining vigilant to the *people living on the banks of the river in the same way as was done on the previous day*, and tell them to quit the houses and move to safe places."

The first point to be noted is that the warnings were to be given in the areas adjoining the river. The second is that the warning was the same as was given on the previous day. The third is that people were merely to be asked to quit the houses and to go to safe places. There is no mention that people were to be informed that the dam had breached. In any case the substance

of the warnings was the same as given on the previous day with this difference that people were asked to quit the houses immediately. The areas also were the same. In other words this warning was at best, an extension of the warning given on the previous day. It should be recalled that it is the same jeep which was used on the previous night by Chand. The log book is also the same. The log entries of the 11th night as also the entries of the 12th are contained in the same log book. The localities in which warnings are alleged to have been given by S. S. Naik from 7-00 a. m. to 6-00 p.m. on the 12th have been mentioned in the extract of the log book Ex. 541. (Photostat copy, P. 1408-A). The car was taken out from M. T. section Vishrambag Wada. From Vishrambag Wada to Narayan Peth and then the localities through which the jeep passed are as follows :—

Vishrambag to Narayan Peth, then Kasba Peth, Sadashiv Peth, Shanwar Peth, Kasba Peth, Nava Pul, Narayan Peth, Kasba Peth, Shanwar Peth, Kasba, Narayan, Kasba then M. T. section.

The mileage covered in the journey which went on for about 11 hours is only 13 miles. It should be recalled that the extract at Ex. 540 shows that the vehicle in which Chand is supposed to have announced warning from 8-30 p.m. to 1-10 a. m. covered a journey of 19 miles. It is surprising that the vehicle which moved from 7-10 a.m. to 6-00 p. m. on the 12th when actually the dam had breached and heavy floods were coming is less in mileage than the journey undertaken on the previous night. Yet the Commission's counsel wants to treat the mileage mentioned in Ex. 540 as sacrosanct. It is significant that S. S. Naik himself has put his signature in the user's column. It is difficult to imagine that S. S. Naik who has the rank of sub-Inspector of police would put forward the same plea as was put forward by Chand, namely, that he put his signature in the signature column in the log book before entries were made by the writer, whoever he was. It must be presumed that the entries were already written down before S. S. Naik put his signature. It does not appear from the report that warnings were given in all the localities through which the jeep moved. In his report at Ex. 1252, Naik has asserted that warnings were announced at a place near Anath Hindu Mahilashram. It is difficult to believe that the Managers of the institution or those who were in-charge of the institution would not stir themselves into activity and take out the young girls that were kept in the Ashram had they really heard the announcement stating that Panshet dam had breached. S. S. Naik has gone to the extent of saying that when the jeep had stopped at a place near the Anath Hindu Mahilashram people residing in the round about areas told him that they had already got directions on the previous night and that they were making preparations for evacuation. It may be pointed out that even in this log extract, Ex. 541, the purpose of the journey is mentioned as "water bandobast". Even the entries in this extract do not say that warnings were given much less is there any reference to the nature of the warning. As against this it is significant that the same log book contains an entry on the next page relating to the duties done on the 13th July in which the purpose of the journey is mentioned as "warning against rumour bandobast".

In view of the statements contained in the Municipal Commissioner's report, Ex. 643, to the effect that the work of warning and evacuation was started in the (traditional) low-lying areas and in view of the expectation of Prabhakar, Kulkarni and Kekre, regarding the extent of floods (to which reference has already been made) it is impossible to believe that warnings were really given in any areas beyond the six low-lying areas.

As already stated according to civil authorities warnings were given not only in the jeep but also by constables moving on foot, and also by constables moving in the other 3 vehicles fitted with wireless apparatus. The reports



of the constables in the various Police Stations have been produced before the Commission. I have carefully gone through these reports and I am in a position to set out the sum and substance of these reports in a few words :

(1) Most of these reports speak of warning having been given about rise of water.

(2) The areas of warnings were extended as per the rise of water.

The reports including the report of Inspector Jadhav attached to the Pharaskhana Police Station are 42 in number. Except the report of M. J. Bhosle, Ex. 1241 (22), no other report speaks of warning having mentioned the fact of the breach of the Panshet dam. It is significant that D. B. Tamboli [Ex. 1241 (90)] who was moving along with M. J. Bhosle does not support him on this point. D. B. Tamboli's report instead of supporting M. J. Bhosle in a way contradicts that report by saying that he informed people at Gadital that dam was likely to breach. It is somewhat interesting to see what instructions were given to the constables attached to the Pharaskhana Police Station to whose reports I have referred just now. The report of B. S. Londhe, Ex. 1241 (37), says that he and constable Gaikwad were instructed by Inspector Jadhav to go to Bhimpura, Mangalwar Peth, and to inform people that there was a likelihood of rise of water and asking them to get ready with their articles to go to safer places. The report of constable J. Y. Gaikwad, Ex. 1241 (12), is equally significant. He says that at 9-30 a message was received from the control room saying that water was going to increase and therefore, warning should be given to the people and bandobast maintained. This again suggests that till 9-30 a.m. the only information received by the constable was that water was likely to rise. Another point which strikes the attention of the reader of these reports is that the areas in which action was taken by the constables are included in the six low-lying areas.

That takes me to a consideration of the reports of the officers attached to the Vishrambag Police Station. These reports are at Ex. 1242 (collectively). Most of these reports undoubtedly speak of warnings having been given about the breach of the Panshet dam. But the contents cannot be accepted as true in view of the fact that the Khabri report of that station, Ex. 546, merely says that Bandobast should be kept. It does not say that warnings should be given. There is, therefore, no likelihood of warnings having been given at that stage. Although the reports speak of warning having been given about the breach of the dam they do not mention the time when these warnings were given. Only a few reports mention the time when warnings were given. But they refer to 10-00 or 10-30, 11-00 or 11-30 a.m. It further seems that whatever work was done by these constables about the evacuation depended upon the rising level of water. As the water went on rising the constables went on thinking of taking action in those areas. Just to illustrate this point let us have a look at the report of S. A. Koli [Ex. 1242 (33)]. He says :

“ We gave warnings to people to get out of their houses after locking the same with their clothes and valuable articles, as the water went on rising.”

Ex. 1242 (5) is the report of Head Constable S. S. Pathan. He also uses similar language in his report. The language used in a large number of these reports is similar. It is in this context that we have to see the localities where warnings were given. Though some of the reports do indicate additional areas adjacent to some of the traditional low-lying areas, it may be that warnings were given there, when water actually entered in those areas. The report of M. H. Chowdhary, Ex. 1242 (11), is extremely interesting. He says that after warning the bewildered refugees taking shelter in a school that, water would enter in their building, he with the help of Head Constable Pathan, constables Hirgude, Konde, Deshmukh, Suryavanshi, removed 25 to



was not apprised about the breach of the Panshet dam. The report of N. M. Waghmare, Police Inspector, in charge of Khadak Police Station, Ex. 603, does not speak of the breach of the Panshet dam. His report suggests that he got instructions after 10-15 a.m. to remove men in Navi Peth, Tilak Road and Kasba Peth etc. The tenor of the reports of the constables attached to Khadak Police Station suggest that they went in action in the areas as the water went on rising. Before concluding this part of the discussion, it is necessary to refer to the fact that a number of Police chowkies were affected by floods and records and furniture either washed away or damaged. Heble also admitted that these police chowkies were affected by the floods: They are, Gadital, Mangalwar Wes, Kasba (under Pharaskhana Police Station), Shanwar Peth, Narayan Peth and Sambhaji Pul Chowkey. Of course, he has suggested that the records of these chowkies were removed; but he is cautious enough to clarify that statement by adding 'as far as I remember'. He also admitted that water entered the building in which the office of the D. I. G., C. I. D. is situate. This office is opposite the District Judge's bungalow. He has the audacity to say that a large part of the records of that office were removed from that office and saved. But he shyly adds:

"I do not know whether part of the record was submerged or washed away."

The Railway Police also had their office in the same building. With regard to their record, Heble says he did not know whether that had been washed away. He tells us that he has made no enquiries till today about that record. The office of the Superintendent, Wireless, is also located in the same building. The equipment of the Wireless Superintendent is kept in the Government godowns and it is an admitted fact that that equipment was either washed away or submerged in water. These tell-tale circumstances destroy the foundation of the theory set up for the first time during enquiry that more areas than the 6 traditional low-lying areas had been fixed upon for the purpose of evacuation.

On a review of the reports, it is clear that whatever warnings were given on the morning of the 12th were initially given in the six low-lying areas. It was never contemplated that water would rise in any areas beyond the six low-lying areas. As the water went on rising the areas of warning appear to have been widened. This conclusion is supported by certain outstanding circumstances which would outweigh any amount of evidence and they are worth reproducing at this stage, even at the cost of repetition:—

The control room was established in the Corporation building in the compound of which water during floods of 1958 had spread and touched the road behind the Corporation building. Not only the control room was located in the Corporation building but it was kept on functioning till 12-00 p.m. when water entered the ground floor. Prabhakar admitted that he did not anticipate that flood water would enter the Corporation building when a decision to locate the control room there was taken on the evening of the 11th. He has conceded that if he and his colleagues had anticipated that the flood water would enter the Corporation building then they would have perhaps selected some other place for that purpose. He went further and admitted that even after the breach of the Panshet dam he and his colleagues did not anticipate that the water would enter the Corporation building and that they were actually taken by surprise when they saw the water entering the Corporation building. The evidence of S. B. Kulkarni, is still more clear. He admitted that till 11-00 a.m. the exact magnitude of the flood was not realised. He also admitted that it never struck him that the water would enter the Corporation building till the water actually rushed in.

Another significant circumstance is that the grain godowns which are situated near the Tophkhana were submerged in water and 45,000 bags of grain were affected. Grain in 38,000 bags was rendered unsafe for human consumption. In one of these godowns costly wireless apparatus was kept, part of which was submerged in water. It is suggested that Chand moved in this area and gave warnings on the previous night and Naik gave warnings on the 12th. Had this locality been in the contemplation of the authorities as being likely to be affected by the floods, certainly prompt and effective action would have been taken on the morning of the 12th when it was learnt that the Panshet dam had breached. In this connection, it is interesting to refer to an admission made by Kekre. Kekre says :

“I did not ask Chand to inform people living in Juna Tophkhana that in case the dam bursts that area would be submerged in water.”

Thirdly, we may refer to another admission of Kekre wherein he says that although according to him the areas round about Shanwar Wada and Kasba chowkey are low-lying areas he did not anticipate that these areas would be affected by floods even after he came to know that the Panshet dam breached. He has added that they had no idea that water would enter these areas till the water actually started coming there.

Fourthly it is the case for the civil authorities that a school in Dhangar Ali (Narayan Peth) was reserved for the accommodation of refugees. This school is very much adjacent to the low-lying part of the Narayan Peth. It is an admitted fact that the school building was submerged in water on the 12th as a result of the breach of the Panshet dam.

These facts expose the falsity of the claim made at the enquiry that warnings were given to areas other than the six low-lying areas on the 11th and 12th and that evacuation was carried out in these areas and so on.

(g) *By the Revenue Authorities (Warnings).*

It is the case for the civil authorities that the work of giving warnings was entrusted to the police and municipal authorities and the R. P. O. and that revenue authorities had no responsibility in the matter. The Collector has frankly admitted that he did not give any instructions to anybody including the D. S. P. on the morning of the 12th that warning should be given about the Panshet dam having been breached. He says that he made enquiries about the warnings having been given on the 12th within 10 days after the actual breach of the dam. He claimed that he would be able to mention the localities after seeing the report of the Mamlatdar, M. S. Bhosle. He explained that these warnings were given orally by persons moving round the streets. The Collector's attention was drawn to the report submitted by Bhosle on 17th July 1962 in which the Mamlatdar stated that he personally moved from the *river side* right upto Yeravada and informed about the breach of the Panshet dam and requested people to evacuate at once. The Collector admitted that in this report there is no mention of announcements having been made about the breach of the Panshet dam by any other method. There is a note below this part of the Collector's deposition which runs thus :

“The witness was given File No. 3 of the Collector's office. He took out the report submitted by Bhosle, Mamlatdar, Poona, dated 18th July 1961.”

Then he proceeded to say :

“After referring to this report, I say that warnings were given between 7-30 and 8-00 a.m. to people living on Jangli Maharaj Road, Pulachi Wadi, Narayan Peth, Shanwar Peth, Kasba, Mangalwar Peth, Gadital, Bhipura, Sangam Bridge, Civil Court Lines, Ashanagar colony, behind Raja Bahadur

Mills, portion upto Bund Garden, Dhobi Ghat, Yeravada, Vaitag Wadi and East Kirkee. The report also gives the text of the warnings as follows :—

‘ Panshet dam had breached, a big flow of water is coming, get out immediately, you should leave your houses with your valuables and go to safe places.’ ”

It will thus appear that there were two reports by the Mamlatdar, one of the 17th and the other of the 18th. In fact, there are 3 reports, one of the 17th; Ex. 442, and two of the 18th both of which have been collectively exhibited as Ex. 443. The first report Ex. 443 relates to damage due to flood in the City of Poona and other adjoining villages situated on the Mutha river. That report is preceded by a letter which says that this was in continuation of his letter dated 17th July 1961. Then comes another report Ex. 443 dated 18th July 1961 but signed by the Mamlatdar on 19th July 1961, which is styled as letter. Reference is shown as “ telephone instructions of 18th July 1961 ”, which apparently suggests that Bhosle was given certain instructions on telephone as a result of which he was submitting that report. It was in this second report that the localities which he, the Mamlatdar, visited on that day for giving warnings as also the text of the warning, appear. If this report is to be believed, then it means that practically all the areas were covered by the Mamlatdar in a jeep. The question that falls to be considered is why did not the Mamlatdar mention the localities in which he had moved for the purpose of giving warnings in his first report Ex. 442. Not only he did not mention the localities, but he stated that he visited the river side right upto Yeravada. Evidently, the areas which are mentioned in his report at Ex. 443 cannot be considered to be river side areas, for instance, Jangli Maharaj Road, Civil Lines, East Kirkee, etc. Why did the Collector deem it necessary to give special instructions on phone to the Mamlatdar to submit a fresh report ? No satisfactory explanation is forth-coming. The Collector was questioned on this point. This is what he has to say :

“ I did not ask the Mamlatdar as to why he had not mentioned these details (about localities and the text of the warning) in his report of the 17th. I knew that some complaints were voiced about the failure to give warnings. I will not be able to say whether this was before 17th or 18th.”

The Collector had admitted earlier that an uproar was made in the newspapers of the 16th that proper warnings were not given. It is, therefore, evident that on finding that the details regarding the localities and the text of the warning were not mentioned in the report submitted on the 17th, the Collector thought it fit to give special instructions to the Mamlatdar. What those instructions are of course is a sealed book for anyone except the Collector and the Mamlatdar. Reading between the lines, it is clear that second part of the report Ex. 443 dated 18th July 1961 is more or less an inspired document and no reliance can be placed on the same. There is also internal evidence afforded by the contents of the report itself to show that its contents cannot be true. According to Bhosle, he was sitting in his office when he learnt about the breach of the Panshet dam from the Corporation office. He speaks about the staff at the Corporation office having promptly despatched the police with trucks which were kept in the Corporation office with specific directions to alert the general public and river side residents in particular to leave their houses with their movables to places of safety and adjoining schools. It may be noted that the instructions were to warn river side people. The instructions make no mention that people were to be told about the breach of the Panshet dam. If river side areas were the only areas in contemplation, is it likely that Bhosle would move in areas other than river side areas ? Whatever that may be, the question arises if the Police went in jeeps to announce warnings, why did the Mamlatdar himself think it necessary to take rounds in a separate

jeep arranged as he says by the Public Health. Further the report makes no mention of the time when the warnings were given by Bhosle. It is further significant that, according to Bhosle, he and the Superintendent, C. T. S., went in a jeep through all the localities mentioned by him. The report of S. A. Sudame, Superintendent, C. T. S., is at Ex. 1196. This report was submitted on 17th August 1961 as an explanatory note showing the details of the work done on the 11th and the 12th. In this report, Sudame, speaks of the arrival of the Taluka Mamlatdar to the Corporation office. He then says :

“The Mamlatdar then left for supervising the alerting work. By this time, the Collector and other officers had also come. The Taluka staff which started coming was asked to go for alerting people by telling them that the dam has given way and people should vacate and go to shelter places. The Collector told me to go and to alert the people. I took a station wagon and went to the following destinations :—

- (1) Pulachi Wadi *via* Sambhaji Park. I saw the Mayor of Poona Corporation alerting and evacuating the people at Pulachi Wadi, personally.
- (2) Narayan Peth Police chowkey *via* Lakdi Bridge by route of Bus No. 2.
- (3) Sitaphal Bag colony and later to Omkareshwar side.,
- (4) From Omkareshwar to Shanwar Peth Police chowkey.....
- (5) Then I took up to Nene Ghat, Apte Ghat and Amriteshwar temple side.”

It is clear from the above that Sudame, Superintendent, C. T. S., never accompanied the Mamlatdar in the latter's itinerary, but that he himself went in a separate station wagon to separate localities. Incidentally, it may be pointed out that Sudame tells us that he was asked by the Collector to go to alert the people, and, therefore, he took up a station wagon and went to various localities. The Collector does not say that he gave any such instructions to anybody. Sudame's report (Ex. 1196) completely contradicts the report of Bhosle, Mamlatdar. In itself it also bears intrinsic indications of falsity.

The report of S. G. Upadhye, City Survey Officer, is at Ex. 1226. He says that he went with the Mamlatdar, City, to the Corporation office at about 8-30 a.m. in a jeep. He asserts that Sapre, Maintenance Surveyor and Gaikwad, Talathi, and many others were seated in the jeep. After reaching the Corporation Office, the party learnt about the breach of the Panshet dam. They were informed that they should give warnings to the people that the people should go to safe places. Thereafter, the party started moving in a jeep. They went first to Nava Pul and then to Amriteshwar, People were informed about the breach in loud voice. Upadhye says that he was asked by the Mamlatdar to get down and give warnings in that very locality. It is quite clear that Upadhye did not accompany the Mamlatdar in his itinerary of the localities mentioned by him in his report.

Turning to the report of V. R. Sapre, the Maintenance Surveyor, Ex. 1230, we find that Sapre got down from the jeep as it was going towards the Corporation building. According to Sapre they reached the Corporation building at 9-00 a.m. After waiting for 5 minutes at the Corporation building the jeep went towards the corner of Shanwar Wada *via* Nava pul. Upadhye was then asked to get down but Sapre continued to remain in the jeep. After the jeep reached Pulachi Wadi, Sapre was asked to get down to give information to the people in that locality. It is clear from Sapre's report that the work regarding warning was not commenced before 9-00 a.m.

B. H. Gaikwad, another Maintenance Surveyor, Ex. 1234, says that after he went to the office, he was informed at 11-30 a.m. by H. D. Pawar, Surveyor, that they had to go to the Corporation building as *water had increased in the*

*Mutha river.* Accordingly, the two along with Jigjini and S. G. Kulkarni, Clerks, went to the Corporation building. On the way near the Post Office of the Khadak Police Station the party met S.G. Upadhye City Survey Officer. All of them went to Nava Pul. As they were not allowed to cross the Nava Pul, they had to return. The statement of Gaikwad clearly establishes that even at 11-30 he was not informed in his office that Panshet dam had breached and all that he was told was that water was rising in the Mutha river.

The report of K. A. Gaikwad, Talathi, is at Ex. 1214. According to him he went to the Corporation building with the Mamlatdar at about 7-00 a.m. on the 12th. At 7-30, he and Mamlatdar went to give warnings to *people living in the river side areas.* According to him, he moved with the Mamlatdar in the localities such as Shanwar Peth, Sitaphal Bag, Omkareshwar Mandir, the area round about Shanwar, the area near Narayan Peth Police Chowkey, the area near the Kasba Peth chowkey and Gadital. This itinerary was completed by about 8-00 a.m. Thereafter, according to Gaikwad, he and the Mamlatdar went to the huts near the Sangam Pul as also near the Bund Garden and the area round about Raja Bahadur Mills. By this time it was 8-30. Thereafter, they went towards the Yeravada Darga and gave warnings to the people on the river side and then returned to the Railway Pul. After giving warnings to all these areas they went back to the Corporation building which was at about 10-00. He has never spoken of having undertaken a journey in a jeep. Apart from this it is significant to note that Mamlatdar Bhosle never mentions that he was accompanied by Gaikwad, Talathi, in his itinerary. As regards timing, his report contradicts the timing mentioned by Upadhye in his report.

The report of A. S. Kamble, Head Talathi, Yeravada, Ex. 1216, is equally interesting. He says that he was taken by the Mamlatdar to the Corporation office on the 12th. He adds that on going there it was learnt that the level of water had increased and therefore, it was necessary to give warnings and accordingly the Mamlatdar put some people from the office in the jeep and took them towards the Shanwar Peth and S. S. Kamble was one of them. According to Kamble he was dropped near the Sitaphal Bag colony.

The evidence detailed above speaks for itself. The impression that one gathers on reading these reports is that Bhosle's story about taking rounds through most of the flood-affected areas and moving right upto Yeravada for giving warnings is a cock and bull story and has been manufactured on 18th July 1961 and it is impossible to reconcile one version with the other. On reading this part of the evidence one is reminded of the remark in 'Alice in Wonderland', that things begin to look 'curiouser and curiouser'.

Though it is not necessary to refer to all the reports submitted by the Talathis, Clerks, and other members of the staff of the City Mamlatdar, it would be interesting to have a look at some of these reports. A number of these reports are in pencil and bear no date. Generally, it is the case of the clerks and talathis that they were called to the Mamlatdar's office on the night of the 11th, that they remained there through the whole of the night, that thereafter on the morning of the 12th they were instructed to go to the Corporation office and there they were given instructions by the superior officers to carry on particular work such as warning etc., and, accordingly, they went to certain localities and carried on that work. The evidence on these points is riddled with contradictions. Some people say that they were instructed to warn people that the dam had breached and others say that they were instructed to tell the people that water was rising. As an instance in point, I may refer to the report of D. V. Raut, Assistant Talathi, Poona City, Ex. 1217. He says that after he reached the Corporation office, Sudame, told him that he should go to places on the *banks of the river* within his jurisdiction and warn

people that water was coming and there was a possibility of danger. He then mentions the various areas in which he gave these warnings and helped people in evacuation. One can easily understand the nature of the warning given by Raut. It is significant that Raut attributes to Sudame the statement that he (i. e. Sudame) instructed him and others to warn people about the coming of water only in localities on the banks of the river. D. V. Raut states that at that time he was accompanied by Gaikwad, Talathi, Poona and Adwant, Talathi Parvati. Raut's statement contained in the report is fully supported from the extract of his diary Ex. 1177. The extract further shows that Gaikwad, Raut and Adwant moved in various localities together. In his diary also he has mentioned that the only warning that he gave to people living on the river-side places was that water was coming and it was likely to rise very high. I have referred to Gaikwad, Head Talathi, Poona's report in connection with the movements of the Mamlatdar, Poona City. I will now refer to his report and also his diary for the purpose of showing that these completely contradict the report and diary of D. V. Raut. Gaikwad in his diary (Ex. 1176) says that he went with the Mamlatdar to the Corporation Office, that there he was told by the Mamlatdar that the Panshet dam had breached and that he went with the Mamlatdar in his jeep. Gaikwad says the same thing in his report, Ex. 1214 already referred to. Adwant, who was the second companion of Raut in his diary, Ex. 1175 as also in his report speaks of having moved with the Mamlatdar on that morning and having told about the dam having breached. It is impossible to reconcile the evidence of Raut with the evidence of Adwant and Gaikwad. As pointed out above, the report of the Mamlatdar suggests that the only two inmates of the jeep were himself and Sudame, Superintendent, C. T. S. I feel no hesitation in saying that all the reports, at any rate, some of these reports, are got up documents and have been brought into existence to support the case that the Mamlatdar's office took adequate steps on the morning of the 12th. It is at least clear that there was no co-ordination between the Mamlatdar's office and the Police Department nor was there any co-operation between the Mamlatdar's office people and Municipal staff. At its best the action that was taken by the Mamlatdar and the members of his office was in the nature of a spontaneous response to a stimulus. There was no planning nor any organisation behind the efforts made by the members of the staff as also the village officers. That some of these reports at any rate are got up will be clear from the following :—

Ex. 1200 is the report of N. S. Kanvinde, Clerk in the Mamlatdar's office. Kanvinde claims that he was sitting in the Mamlatdar's office through the whole of the night along with Peater Borges, E. A. K., Poona City, and some others. He says that Sudame, Superintendent, C. T. S. who was sitting in the Corporation office informed them on phone at 6-10 on the 12th that the danger to the Panshet dam was completely averted as a result of the work of bag stacking. It is nobody's case that any such message was received either by Dandwate or anyone else in the Corporation. Although Sudame in his report at Ex. 1296 says :

“ Till 6-00 a.m. on 12th July 1961 no danger was reported. ”

He does not say that he informed anyone in the Mamlatdar's office that there was no danger to the Panshet dam or that the danger was averted. The matter does not stop there. Kanvinde says that he went to the Corporation office at 9-00 a.m. on the 12th and after going there learnt that water was increasing as the Panshet dam was in danger. That means that till 9-00 a.m. at least the Mamlatdar's office had no information that the dam had breached. Kanvinde adds that this information was conveyed to Peater Borges. He also adds that at 9-30 a.m. a message was received that the Khadakwasla dam was in danger

and that thereafter that he and others were asked by Borges to go to the Corporation building. In accordance with those instructions Kanvinde, Maintenance Surveyor, Pote, S. T. Pawar and Deshpande started going to the Corporation building. But they could not go to the Corporation building as the Lloyd's bridge was already closed. Another instance is supplied by the report of S. N. Gonekar, Ex. 1201. He says that on the morning of the 12th he had heard nothing about the flood etc. He started for carrying on his duty of recovery of non-agricultural assessment at about 8-30 a.m. A number of clerks in their reports have said that they did not know anything about the floods or about the breach of the Panshet dam till 10-00 a.m. or 10-30 a.m. The report of Bhalerao, Clerk, Ex. 1203, is equally interesting. He says that he learnt from Peter Borges after going to the office at 8-15 that the Panshet dam had breached. According to him, he and some others were asked to go to Pulachi Wadi after giving warnings about the breach of the Panshet dam. Bhalerao then described various duties performed by him till 6-00 p.m. He says that thereafter he started going to his house and noticed that the house was under water and had fallen down completely. He adds that his old mother, the only inmate in his house, was rescued from the second floor of the house by people. This offers a sad commentary upon the efforts made by the police and the fire brigade so far as the rescue operations are concerned. The report of R. B. Sawant, Bill Clerk, Ex. 1206, is equally revealing. He says that when he went to the Corporation building on the morning of the 12th Sudame told him that water in the river was likely to increase very high. He, therefore, asked Sawant to go to Navi Peth and give warnings to people. He adds that accordingly he and Raut went to Navi Peth and other localities to give warnings. He then refers to the nature of the warnings, that he and his colleagues gave and says that they told the people that water was going to increase. To the same effect are the reports of S. V. Apte, and R. G. Rode, Exs. 1207 and 1208, two more clerks in the Mamlatdar's office. They also speak of Sudame having told them about the likely increase in the water. Accordingly, he and Rode were asked to go to Pulachi Wadi and Sawant and Raut were asked to go to Yeravada. Rode in his report Ex. 1208 fully supports Apte. I find it very difficult to reconcile the position taken up by some of these clerks who say that all that they were told was that water was likely to increase and that the warnings should convey the same information to the people and those who say that they were told that the dam had breached.

Let us now turn to the report of Mahamuni, who according to the evidence given by the Collector, Dandwate and Pharate, was one of the persons who were sitting in the Corporation building on the 11th night. In his report at Ex. 1205 Mahamuni says (as rendered in English) :—

“The Corporation people appeared to be in a hurry in collecting cement bags and sending them to Panshet between 2-00 and 3-00 a.m. Immediately thereafter Dandwate made enquiries on the wireless about the condition of the dam and water and learnt that there was no danger. On that night whenever Dandwate rang up every time he received a reply that there was no danger to the dam. Whatever information Dandwate got either I or Sudame used to convey the same to the staff in the Mamlatdar's office.”

Mahamuni wants to be more royal than the king himself. It is not Dandwate's case that he made any enquiries between 2-00 and 3-00 a.m. after learning that the Corporation staff was engaged in sending cement bags, nor does he say that whenever he made enquiries on the wireless the invariable reply received by him was that there was no danger to the dam. With regard to the activities on the morning of the 12th Mahamuni in his report says that he along with Mamlatdar went on a round in a jeep and first went to Narayan Peth. It would thus appear that everyone claims to be in the same jeep as the Mamlatdar.

The jeep appears to be a majic vehicle so that it could accommodate any and everyone who wanted to sit in or any and everyone whom the Mamlatdar wanted to seat in the same. With regard to his activities on that morning it is clear that they were confined to Gadital, Ashanagar, Sitaphal Bag colony and adjoining areas on the river bank.

I may now refer to a few documents reflecting the activities of the Revenue office in the rural area. It may at once be conceded that the work done in the rural area appears to have been more systematic and proper than in the City area. Ex. 1193 contains extracts of the Davandi Register in respect of the following villages :—Kondhavé-Dhawade, Shivne, Barje, Hingne, Kothrud, Khoradi, Manjri, Kusale, Nanded, Vadgaon, Hingne Khurd, Loni Kalbhor, Manjri Budruk, Theur, Kolvade, Saste, Biwari, Ashtapur, Hingne Khurd, Naigam, Koregaon, Math, Bhavrapur, and Khangaon Tek. All these villages are on the banks of the Mutha river. These registers indicate that the warnings conveyed to the villagers in most of the villages on the night of the 11th also mentioned that there was danger to the Panshet dam. This completely explodes the theory put forward by the Collector, namely, that no danger to the dam was apprehended on the evening of the 11th. The time about giving information by beat of drums about the danger to the Panshet dam on the 11th however, varies from village to village. In some villages, the announcement was made at 8-00, 8-15, 8-30 and in others it was made at 9-30 or 10-00. In some others it was made in the afternoon at about 4-00 p.m.

The report of the 5th additional Mamlatdar Haveli, E. P. Barge, is at Ex. 1238. Y. T. Deshmukh is the Additional Mamlatdar at Haveli and his report is at Ex. 1239. In this report Deshmukh has given the text that was used for publishing the news regarding the condition of the Panshet dam on 11th July 1961, as rendered in English, is as follows :—

“Water is increasing in the Panshet and Khadakwasla Dams. Therefore, there is a likelihood of bigger floods coming. So all people should remain cautious and should move to safer places immediately in case of floods.”

It is significant that the warning does not mention any danger to the Panshet dam and yet extracts of Dawandi Register quoted above speak about the warning having been given that danger to the dam was apprehended. This illustrates how risky it is to rely upon the so-called texts which are mentioned in the subsequent documents and which evidently are spun out of their imagination by these officers.

(h) *By Municipal Authorities (Warnings)*

Coming to the work done by the Municipal staff in relation to the warnings and carrying out evacuation operations, it is necessary to remember that the report submitted by S. B. Kulkarni, Ex. 643, does not refer to any warnings having been given by the members of the Municipal staff on the morning of the 12th. On the other hand, the report says that on learning about the breach of the Panshet dam, the Police vans went round the City warning the people in the aforesaid areas (i.e. the 6 lowlying areas). Neither Kulkarni nor Darp says that he asked any of the members of his staff to give any warnings to the people. J. T. Sawant, the Chief Marketing Inspector, in his report at Ex. 627 says that at about 8-00 a.m. he went out to see whether schools had opened. He adds that on his way at Narayan Peth near the Ashtabhuj temple he informed some people that the Panshet dam had breached. He also adds that on his way at Mangalwar Peth also he informed some persons in regard to the same. He admits that he saw that school Nos. 12 and 15 were opened. Thereafter he went to Ashanagar and saw school No. 61 as having been opened and gave information to the teachers. He then met the Administrative Officer at 10-15 and informed Kale the Administrative Officer, that all the schools should be closed and the



heads of these schools instructed to give proper warnings to the students. It is clear that Sawant's object was not to give warnings but to see that the schools were opened for receiving the refugees. Vedpathak in his report at Ex. 629, further says that he was provided with a jeep car for conveying warnings to people living in Lakdi Pul, Ashtabhujia Devi and Sitaphal Bag areas. Rane in his report at Ex. 630 says that he went in a jeep and himself opened school Nos. 14, 30 and 61. He saw police trucks in Pulachi Wadi area and some activity for moving articles etc., going on in that area. According to him Vedpathak was with him. It is significant that Rane does not say that either he or Vedpathak gave any warnings sitting in this jeep. It is significant that Rane's house opposite Sambhaji Park was submerged and it is clear from the tenor of his report that he had no idea that his house would be submerged. It further appears that the authorities did not have the locality of the Mang colony in their view as one of the areas likely to be affected by floods. Padve does not speak of having taken part in giving warnings or helping in evacuation. (*vide* Ex. 631 his report). Kale, the Administrative Officer in his report at Ex. 660 says that on receiving information from Sawant at 10-30 a.m. he gave instructions for closing all the primary schools at about 10-55 or so. Yadaṅ, the City Engineer, in his report at Ex. 659 says that at about 8-30 he started going out in the company of Kirad, the then Mayor and first went to Pulachiwadi and thereafter to Narayan Peth. According to him, warnings were conveyed by him to people in these localities. In his cross-examination he admitted that he was not in a position to say whether warnings were given by the police in this locality before he went there. He also admitted that he did not come across any policeman engaged in giving any warnings except in the locality of Anath Hindu Mahilashram. He admitted that the inmates of the Ashram who were girls did not quit the Ashram till 9-30 when he was in that locality. Ex. 661(4) is the report of M. G. Phule, who was working as a clerk in the transport section. He resides in Dhangar Ali, near the house of City Engineer, Yadav. He went to the store-room at 8-30. At about 9-30 he learnt that water was rising in Mutha. At 10-30 he learnt that the dam had breached. He was asked to go home. On going home he found that water was entering his house. Ex. 661(6) is the report of Dnyaneshwar Kale, a cleaner. His house is situated on the bank of river in Narayan Peth. He had gone to the workshop on the Deccan Gymkhana. There at about 9-30 he learnt that Panshet dam had breached. He was allowed to go. After going to his house, he informed the neighbours that the dam had breached and unprecedented floods would come. This is corroborated by the report of G. R. Bhide Ex. 661(8) who is the neighbour of Kale. This evidence clearly establishes that not only no warnings were given on the night of the 11th (in this area) but no warnings were given on the morning of the 12th regarding the breach of the dam. It is equally clear from the reports of M. M. Dalvi, the assessor and collector of taxes (Ex. 644), R. G. Godbole, Chief Accountant (Ex. 645), Dr. Gracious, Health Officer, and some others that none of them had any knowledge about the breach of the dam and that they were doing normal duties till the water rose very high. It is evident that the Municipal authorities have played very little part either in the matter of giving warnings or evacuation on the 12th. Whatever that may be, the part played by the municipal staff is of a minor and insignificant character. Each appears to have acted on his own initiative and according to his impulse.

The description about the activities of the municipal staff cannot be completed without dealing with the activities of the Transport Section and the Fire Brigade. Ex. 635 is the report of V. D. Desai, the Transport Manager. Desai says that he learnt from a member of the staff at about 9-00 a.m. that the Panshet dam had breached. He further says that when he went to Pulachi Wadi he met Mr. Lad, the Fire Bridge Superintendent who told him that the water in the

Khadakwasla dam was overflowing to a height of 4 to 6 feet. At this time Traffic Inspector, Deshpande, Assistant Traffic Inspector, Darekar and Deshmukh, Clerk of the Transport Committee, were present. Desai then gave necessary instructions to Traffic Inspector, Deshpande. He then informed Traffic Inspector, Kadam, to stop the bus traffic via Holkar Bridge and Sangam Bridge. At 10-40 he along with his colleagues went to Swar Gate. Thereafter he went to the workshop. He says that he noticed several school going boys standing on the various bus stops in the City and cantonment areas. He gave instructions to the boys that they could not be taken to areas beyond river. It is clear from the report of V. D. Desai, that he had no instructions in the morning that some areas in the City of Poona would be flooded and, therefore, traffic should be regulated accordingly, nor did he give any instructions to assist in the work of evacuation. It is equally clear that whatever instructions Desai gave to his subordinates were based on the changing situation. Can anyone say that this was a satisfactory state of affairs? It is clear from the evidence of Prabhakar, the Collector, that the bus traffic was going on as usual till 11-30 a.m. when S. B. Kulkarni gave instructions to the officer to stop service. This is what Prabhakar says in answers to questions by Phadke :

“I did not ask the officer in charge of the bus service as to why he was carrying on the bus traffic when there were floods coming in to the City. The Municipal Commissioner instructed the officer to stop service and move the buses away from the river.”

S. B. Kulkarni confirms this and says :

“During the course of the second round at about 11-00 I gave instructions that the buses standing on the Deccan Gymkhana Stand should be taken to higher places.”

He further adds that Traffic Manager had already given instructions to stop plying buses in the low-lying areas. It is implicit in this that the Deccan Gymkhana area was not a low-lying area and when Kulkarni spoke of the Manager having given instructions to stop the plying of the buses in the low-lying areas he had in his mind the 6 traditional low-lying areas.

The only evidence that needs to be considered to complete the circle regarding the evidence adduced on behalf of the Municipal authorities is the report of R. B. Lad, Fire Brigade Superintendent. That report is dated 6th February 1961, Ex. 654. In this report, Lad says that at 8-15 p.m., Rane, Welfare Officer, informed him that he should be in readiness as usual for duty in connection with flood. This itself suggests that Lad was not alerted to be in readiness to meet an extra-ordinary or difficult situation. He was expected to get himself ready to meet the normal flood situation. From paragraph 5 of the report it appears that he had received no authoritative communication regarding the breach of the dam nor did he receive any instructions to go into action. He heard from Khire, Stores Officer, that the Panshet dam had breached. Lad then went out and saw Kadam, Watch and Ward Officer. He then sent a message to various fire stations as follows :

“Panshet dam breached, serious threat to the City, alert staff, await instructions from Darp and take immediate action.”

He was then awaiting instructions from Darp, the Assistant Municipal Commissioner (Special), but he could not contact him till 8-50 a.m. He then speaks of having taken rounds to draw the attention of the citizens to the gravity of the situation by ringing fire bell. According to Lad the Fire Brigade Headquarters at Budhwar received the first emergency call at 11-25 a. m. saying :

“People trapped inside a flooded house”.

50 people were rescued by the firemen's lift. The rescue work was attended to near Virachi Talim, Shanwar Peth and other places. Lad has frankly

admitted that rescue party was assisted by local youths and with their help people could be rescued in these localities. When Lad came to the road opposite Kanya Shala he was told that number of persons needed help. He proceeds to say :

“ without a boat it was not then possible to go inside the flooded streets. I returned back to Budhwar Fire Station and tried to contact high officials but it was all in vain due to the destruction of the tele-communication.”

Lad then describes how he saw a large number of women clinging to the dome of Shri Shiv temple in Bhimnagar colony. He was convinced that no human efforts would save them without the help of a boat. He therefore, returned to Budhwar station along with Botre. He then sent BYL 1203 to Peshve Park in the hope of getting a boat, generally used for giving joy rides to the visitors of the park. There was a boat which was lifted and brought to Mangalwar Peth. The boat was put into water in the Chuna Bhatti lane and Lad started moving to Bhimnagar area, in that boat. When the boat came across main road a sidewall of a two storied building gave way and about 8 women with children in their arms came out in the gallery shouting and crying. The boat was turned to that direction. 4 people were seen clinging to the electric post of a collapsed building. On the way he saw about 70 men, women and children residing on a roof of building which was then completely under water. Lad transported women and children to the opposite building. He then sighted another small boat and with its assistance proceeded to Bhimnagar. He found it difficult to go through debries of fallen houses etc. He however, prepared an improvised bridge and brought women into the boat and carried them to places of safety. Lad says that he made about 11 trips till 7-00 O'clock each time carrying about 10 to 15 persons thus making a total of about 150 persons. Thus the picture emerging from this tell-tale report is gloomy and does little credit to the civil authorities. Had warnings been given and proper preparations for rescue made, so many persons would not have found themselves in the desperate and precarious condition in which Lad saw them.

#### (i) *The Army Help*

Let us not forget that boats were available from the Sub Area Command, Poona. No attempt was made on the 11th to secure the help of the military either in the matter of securing boats or in the matter of securing the help of the Jawans who are experienced to carry on rescue work in difficult conditions. It is necessary to remember at this stage that during the crisis of 1958 floods, arrangements were made for securing boats as also the help of the military Jawans. Yet we are told by no less a person than Mohite that the measures devised in 1961 were superior to the measures devised in 1958. At the eleventh hour 3 or 4 boats were called from the Engineering College Boat Club. The boys of the Engineering College ferried these boats and heroically came to the rescue of the citizens. Does this reflect credit upon the foresight of the civil authorities? Should conditions be created when it should have been necessary for young boys to endanger their lives when the help of the experienced boatmen from the military was available for the asking? As stated in one of the paragraphs above, fortunately, for Poona, there is a military centre, the Sub-Area Headquarters of which are located in Poona itself. Unfortunately, however, for the citizens due to complacency and arrogance of the civil authorities this help was not asked for, which help would have made a world of difference, to what took place on the 12th of July 1961. Even the Fire Brigade chief was not alerted on the 11th night. He had to face the flood situation almost without any preparation and he did what was possible to do in the circumstances of

the case. It is not my contention that the individual officers did not contribute their mite. Most of them did their best in the circumstances then prevailing. Even the citizens including young boys heroically came forward to help people in their plight to rescue them from the grip of the deadly floods. But could the civil authorities take any credit for what was individually done by the individual officers and the citizens? Their organisation was evidently poor. There was no co-ordination between the different Government agencies. The highly placed officers got demoralised, their judgement having been completely paralysed. The highest and the most experienced among these officers, namely, Mohite, had already left Poona and by doing so had abandoned the citizens of Poona to their fate. The Collector got himself immobilised in the control room almost from 9-00 a.m. to 11-00 a.m. All that he could do was to go on ringing people and officers making frantic calls upon them for saving the situation and rendering help. The District Superintendent of Police and the Municipal Commissioner also got themselves closetted in the control room which itself was in the danger zone.

It is interesting to see at what time the Collector thought of asking for the help of the Army. In paragraph 62 of his written statement the Collector says that at about 11-00 a.m. he requested the Sub-Area Commander to send 25 vehicles and 100 army personnel to the Municipal Corporation building for assisting in evacuation work. In view of the very late requisition it was not possible for the Sub-Area Commander to send the trucks and men to reach the Corporation building in time. At about 12-00 the Collector had to ring up the Sub-Area Commander to tell him not to send trucks and men to the Corporation building as the building itself was under water. It was at that time that the idea of requisitioning boats occurred to the Collector and he says at paragraph 69 of his written statement that he requested the Commander to send boats to the Police Headquarters, Bhamburda, for being used for rescue operations. The boats were not received till 1-00 p.m. The Collector made several efforts to contact the Commander on phone but he could not be contacted. He, therefore, requested the D. S. P. to contact his A. S. P. who was on the other side of the river to personally go to the Sub-Area Commander, Poona to repeat the request for boats. It is an admitted fact that ultimately no boats came for helping in the rescue operations which were carried on heroically by the boys of the Engineering College and by Lad who had secured a small ferry boat from the Peshve Park. It is an admitted fact that the Collector sent numerous messages on phone to the Sub-Area Commander. The first message was at 7-45 hrs. stating that the Panshet dam was giving way, the second was at 10-00 hrs. saying that that the dam had broken and water overflowing. It was only in his third message sent at 11-00 hrs. that the request for 25 vehicles and 100 men was contained. Again, in his message at 12-00 hrs., the Collector informed the Commander that vehicles and men were not required as the roads to the Ganesh Khind Police Station were under water. (Ganesh Khind is a mistake for Bhamburda). On behalf of the Collector the D. S. P. rang up the Sub-Area Commander at 13-00 hrs. telling him that the Collector had shifted to the Police Headquarters and boats would be required there. This request was repeated at 14-15 hrs. It is significant to note that at no time request for mobile kitchens, mobile medical ambulances was made either by the Collector or by the D. S. P. At 20-45 hrs. Brig. Bedi told the Collector that mobile kitchens, mobile medical ambulances and boats were available, if required. There is nothing to show that the Collector grasped the significance of this offer or at any time attempted to utilise this magnificent offer. Did not the situation show that it was absolutely essential to ask for military assistance on the night of the 11th itself in anticipation of the breach of the Khadakwasla dam and yet Heble has the audacity

to say that on the night of the 11th they did not think it necessary to ask for military help. Could not the authorities anticipate what was anticipated by Mone during the floods of 1958? All this speaks of want of foresight, lack of planning, compeccency and indifference. It may be mentioned that the help of the Home Guards was not secured in proper time. This aspect will be discussed in detail while dealing with Heble's appreciation of the situation. It is equally interesting that even at that critical moment he did not think of contacting the A. I. R. Station, but as a piece of happy co-incidence the Assistant Director of the A. I. R. Station, Poona, himself came to the Corporation building to meet the Collector. This is a case of mountain going to Mohmed instead of Mohmed going to the mountain. In view of this delay, it was not possible for the A. I. R. to broadcast any news about the breach of the Panshet dam or the extent of the floods, till 12-30 p.m.

(j) *Traffic Jams and normalcy of day to day activities*

There is another way of finding out as to whether warnings about the breach of the dam were properly conveyed to the citizens of Poona on the morning of the 12th. There is ample evidence to show that traffic on the morning of the 12th was going on in a normal way in all the areas which have been called by the civil authorities as additional low-laying areas. It is also noteworthy that crowds of sight seers were gathering at impotant bridges such as, Lakdi Bridge, Sangam Bridge and other places to see the rise of water. It is euqally important that most of the offices, including the Collector's office, Commissioner's office and the Municipal Commissioner's office, were working with normal complement on the 12th. These phenomena are indicative that people were behaving as if nothing unusual had happened or was likely to happen. In answer to questions by Phadke on behalf of the Citizens' Committee, Prabhakar gave the following interesting replies :—

"I did not make enquiries even then (between 8-45 a.m. and 11-00 a.m.) as to who was put in overall charge of the evacuation operations nor did anyone tell me about it. I did not notice whether Modern High School was running after 11-15 a.m. when I was taking a round..... Traffic was quite normal at the old Railway bridge when I passed by that side on my way to the Corporation building at about 8-45 a.m. on the 12th..... I noticed Police bandobast on the Jangli Maharaj Road at 11-45 a.m. I did not notice whether the traffic was as usual but I noticed that people were moving away from the river side. I noticed that a few of the shops were open. I cannot say whether the banks and the schools were also open. My object in taking a round after 11-15 a.m. was to see whether evacuation was alright. .... I did not ask the officer in charge of the bus service as to why he was carrying on the bus traffic when there were floods coming to the City..... I did not notice whether Deccan Gymkhana Post Office was running at that time. We were on a quick-run. I passed by the Lakdi Bridge at about 11-30 a.m. on the 12th. There were some policemen who were advising men not to pass by the Lakdi bridge. I cannot however say whether they were preventing people from going to the bridge nor whether they had formed a cordon with a view to preventing them from passing the bridge. The D. S. P. Mr. Heble was with me at that time. If I remember right, the D. S. P., issued instructions to stop the traffic. Earlier, at about 11-20 a.m., I had passed by the side of the New Bridge and at that time a large crowd was standing on both sides of the New Bridge watching the floods. I gave a direction that the bridge should be cleared. I do not exactly know whether the bridge was actually cleared thereafter because I did not wait there. It did not strike me as extraordinary

that the bridges and streets should be crowded by sight-seers in spite of the fact that the warnings were announced saying that the Panshet dam had breached. I add that I did not stop to think about these things as I was busy. I did not get down from the vehicle and ask the citizens as to how it was that when warnings were given they were crowding in the streets in spite of the warnings. I was so preoccupied that it was not possible for me to make any such enquiries."

The statements made by the D. S. P. on these points are also interesting :—

"On the 12th July, the Collector and I started from the Corporation building at about 11-00 O'clock for taking rounds of the flood threatend localities.....At that time, flood water started coming over the approach road of the Lakdi bridge. We noticed that a few shops on these roads were open. Most of the shops had been closed and the shops that were open were also winding up their business and were in the process of evacuation. We did not pass by the Modern High School because we took a turn towards the left near the Statue of Rani of Zanshi. I do not know whether the Municipal authorities had issued orders for closing the schools, the buildings of which were requisitioned for sheltering the evacuees. I did not notice any corporation bus running on the roads by which we were passing. But I saw some buses stationary at the bus terminus near the Hind Vijay Talkies.....I should say that at about 11-15 traffic had almost come to an end. There was a crowd of people on the bus stop on the Deccan Gymkhana Bus Stop. I cannot say whether some of them were passengers who were waiting for the bus. My impression is that most of them had gathered to see the rising level of water. Some of the shops on the Deccan Gymkhana were open. *I do not remember whether the International Book Depot was open.* I do not know at what time the Proprietor and the staff of the International Book Depot were evacuated from the shop. I have not yet heard that they had to be evacuated from the shop after the level of water had risen to a height of some feet inside the building. While starting from the Corporation building, Mr. Kirad, Mayor and Nabar, Superintendent of Wireless, were also with us. The Municipal Commissioner gave directions to the buses that were standing at the Deccan Gymkhana stop to remove themselves to the Shivaji Nagar Police Chowkey.....Till then, it was not deemed unsafe to immobilise the buses at the Deccan Gymkhana Bus Stop. My attention is invited to the following sentence at paragraph 45 of my written sentence :—

'The Municipal Commissioner also issued instructions to the Poona Municipal Transport authorities to suspend the bus service in the low-lying areas and to render such assistance as was necessary at that time'.

That is correct. I now agree that the Municipal Commissioner gave instructions to buses that had stopped at the Deccan Gymkhana Bus Stop to suspend the bus service in the low-lying areas. The only locality in which we could notice evacuation operations going on in the course of our round was Pulachi Wadi. There were large number of sight-seers on the Lakdi bridge. In spite of the warnings telling people that they should evacuate to safe places, I noticed large crowds on the Lakdi bridge. It did strike me as odd that people who were warned to go to safe places still crowded near the Sangam bridge and the Lakdi bridge which stood the danger of submergence. Traffic on the Lakdi bridge was not prohibited. We saw few persons crossing or coming or going over the Lakdi bridge. We did not notice any vehicles. Only 3 vehicles were being used by us for passing the Lakdi bridge. All of us got down at the Bus Stop near the Hindvijay talkies. I and the Collector asked the people there to disperse. From the bus stop, we went on foot to a spot in front of the Deccan Gymkhana Post Office.

As the vehicles approached the Sambhaji bridge, I alone got down at Sambhaji bridge to warn the people to disperse. My companions remained in the vehicles. The car was stopped at the entrance of the Narayan Peth. All of us got down there. I did not notice whether the Post Office on the Deccan Gymkhana was running while we were passing nor did I notice whether the International Book Depot was open. I do not remember whether the Bank of Maharashtra was open. I did not come to know that the staff of the Bank of Maharashtra had to be evacuated in a hurry while the water was rushing in the building with considerable force. Till now, I have not heard that the Account Books or currency notes of the Bank of Maharashtra were submerged.....I did not have time to observe what was going on in the shops because my mind was preoccupied with the question of dispersing the large crowd that was collected near the Sambhaji bridge and its approaches. Even when we were walking on foot after stopping our vehicle at the Bus Stop, I did not notice whether any shops round about were running.....I agree that the pedestrian traffic was going on at that time. I gave instructions to close that traffic also. My attention is invited to the following sentence in my written statement :—

‘I also instructed the Police personnel in this area to close the traffic on the bridge.’

I have used the general word ‘traffic’ and I should have used more specific words ‘pedestrian traffic’ to distinguish it from vehicular traffic. My attention is also invited to the following sentence at paragraph 47 of my written statement :—

‘I directed the Police personnel on duty there to clear this area as well as the bridge immediately and to stop all traffic.’

By traffic, I mean all kinds of traffic, pedestrian as well as vehicular. My attention is further drawn to another sentence in the same paragraph.

‘Our cars had to proceed at snail’s speed over the bridge owing to the traffic jam caused by vehicles as well as pedestrians trying to rush to safety before the bridge got submerged.’

My explanation is that several cars were stopped at the end of the Tilak Road and Laxmi Road. They made a rush to cross the bridge when police tried to clear the crowd on it. That is what I mean by saying a traffic jam was caused by vehicles. There were several policemen standing at the Tilak Road end of the bridge. I cannot say the number, even approximately. I cannot say whether they were 25, 50 or more. I cannot say whether they were less than 25. The motor vehicles rushed past the policemen across the Tilak bridge and created a jam. I was not in my uniform while I was taking rounds. I had no time to put on the uniform after hearing the news of the breach of the Panshet dam.....The policemen on the bridge had to use force to disperse the crowd on the bridge. I have seen caning resorted to by the police. I do not think that the unwillingness of the people to disperse inspite of on-the-spot warning indicated that they had not any previous warning about the breach of the Panshet dam. After we went back towards the Shiv Darshan Lodge, I again warned the crowd to disperse and directed the policemen on duty to stop all traffic proceeding towards the bridge. I did not stop to see whether the traffic was actually stopped.....We went to the emergency control room after our rounds via the Modern High School. I did not notice whether the High School was running or closed..... I did not notice any boys in the school building or outside. I deny the suggestion put to me, namely, that the warning issued was insufficient and

further the police force detailed for the task was inadequate even for the purpose of stopping vehicular traffic.”

I have cited the passages in their full length because I am sure that the passages speak for themselves. It is clear that Heble's statements are evasive and Heble is out for dodging every inconvenient aspect. He made a positive statement in the first instance saying that most of the shops were closed. When confronted with specific names of shops, he said that he had no time to see whether the shops were open or not. He was unable to say even whether the Deccan Gymkhana Post Office was working. He does not know even till today what happened to the inmates of the International Book Service and how they were rescued. We have got the statements of the postal authorities and the authorities of the Bank of Maharashtra which clearly show that both these institutions were running till they were submerged in water. We have also the evidence of Dixit, Proprietor of the International Book Service, which gives a very vivid and graphic description as to how they were marooned and as to how they had to be pushed through a small opening of a window and how they were precariously perched on the gallery till they were rescued by the neighbours. Heble wants to bury his head like an ostrich and blink the facts which stare in our face. Is this the evidence of a straight forward and truthful officer? It is insulting to our intelligence to ask us to believe statements like those which have been cited above, when there is overwhelming evidence to show that the activities of the people were going on in a normal way, that the shops and offices were running in their usual way and at the usual time and people were running to the river side (which were the most dangerous areas) just to see the fun of floods. On the question of working of offices the following passage from Prabhakar's evidence will throw considerable light :-

“I have made no enquiries till to-day as to whether all the Government offices were open and functioning in a normal way and with a normal complement till after 11-00 a.m. on the 12th. I had not asked my office to be closed and it functioned all the day. I know that the residential houses and flats of a number of Government servants were either sub-merged or washed away in floods with or without belongings while they were working in their offices. I know that the residential flats of some of my own staff including my Deputy Chitnis, Dandwate (who stays in Kasba Peth) have been affected by floods..... I have not instituted any enquiry with the members of my staff or with other Government servants as to whether they or their family members had received warnings in the morning about the breach of the Panshet dam.

It is interesting to note that Pharate has to say about the office attendance on that day (12th); as also whether the members of the staff were affected in the floods. This is what he says :

“Majority of the members of the staff did attend the office at the usual office hours. I cannot say whether any of these members of the staff was aware of the breach of the Panshet dam. I now know how many families of the members of the Collector's office have been affected by the floods of the 12th July. I am certain that at least 40 of the employees in the Collector's office were affected by the floods. I cannot say if this number is greater than 40. Out of these 40 persons only 2 did not attend the office on the 12th ..... I came to know where these 38 employees who attended the office, resided. Some of them stayed in Kasba Peth, some in Somwar Peth, some in Shanwar Peth, some in Narayan Peth, some in Deccan Gymkhana, including Jangli Maharaj Road. In respect of some of the employees, everything was washed away and what remained was the wearing apparel. In respect of some, few things remained, but most was lost. I did not ask them why they came to the office that morning. I did not make



enquiries whether these sufferers knew about the likelihood of the floods on the night of the 11th. Nobody among them told me that they suffered loss because they did not come to know anything about the impending floods."

(k) *The significance of the submergence of certain areas*

Had there been any truth in the statement that the Deccan Gymkhana area was treated as a lowlying area, then certainly the Deccan Gymkhana Police Station at least would have been shifted on the morning of the 12th. It is an admitted fact that the records of the Deccan Gymkhana Police Station were washed away. Heble, after having reluctantly admitted that fact, proceeded to say that he did not know whether the Police Station furniture was also washed away. He also admitted that the Station was working till about 1-00 p.m. and that the records were washed away a little after 1-00 p.m. He also admitted that the water had risen to a height between 6 feet and 10 feet above the cell in the building where the Police Station is located. In the same context, let us have a look at the admissions made by the Collector with regard to the Government godowns :

"The Government godowns containing grain are located between the left bank of the Mutha river and Justice Ranade Road. There were about 7 godowns and 45,000 bags of grain belonging to the State Government was stocked in these 7 godowns. In addition to the State Government grains, there were also bags of grain belonging to Central Government. . . . . Till 9-00 a.m. on the 12th, I did not anticipate that the flood water would enter these godowns. Between 9-00 and 11-00, I anticipated that the floods might enter the godowns. I myself made these estimates on the basis of message regarding the closure of the schools and colleges. Even at that stage, I did not take the help of any engineers to estimate the extent of floods. I made no attempt to remove even a single bag from the godown. I sent a message to the godown staff to remove as many bags as possible from the godowns. This message was sent between 9-00 a.m. and 11-00 a.m. I cannot mention even approximately the time of the despatch of this message. Actually, not a single bag was removed from the godowns.

Q. Does it not mean that your message for removal of the stock was not received in time so as to enable the staff to remove the bags ?

A. I cannot give any answer to this question. I do not know what time the water started entering the godowns."

When questioned by Phadke on the same point, Prabhakar stated :

"There was a District Special Officer by name, D. H. Gokhale, but he handed over charge on the evening of the 11th to A. T. Pharate. A Technical Assistant is stationed in Poona to look after the godowns of the Central Government. One Mr. Bhavnani was then the Technical Assistant. He was not informed on the 11th about the possible floods. I do not know if he was informed on the 12th about the actual breach of the dam."

Could this be regarded as the behaviour of a vigilant and watchful public servant ? At this stage, I may take notice of a note which Prabhakar had kept ready and which he produced during his cross-examination by Ghaswala, (Ex. 456). An attempt is made to show that 576 hamals and 19 trucks would be required to work for 17 hours for removing all the bags in all the godowns. This is evidently an attempt to mislead the Commission. Assuming that the arithmetical calculations are correct, the question is, did Prabhakar anticipate the need of removing the bags before 10-00 a.m. on the 12th and if so, did he make any attempt at doing so ? Had the attempt been started and left incomplete for want of time, there would be some sense in the mathematical jugglery attempted in the note.

At this stage, I feel it necessary to meet an argument which has been advanced both by the Commission's counsel as also by the Advocate on behalf of the civil authorities. That argument is that the Mutha Canal Office which is located near the Sangam bridge was also submerged in water on the 12th, and the record was drowned in water. M. V. Nagarkar, Executive Engineer, Poona Irrigation Division, is in the overall charge of this Canal Office. The argument is that if Nagarkar could not visualise the extent of floods, it is hardly fair to expect the civil authorities to visualise the extent of floods. The argument proceeds that had Nagarkar visualised the possibility of the Canal office being submerged in water, he would certainly have taken steps to see that the record was removed in proper time from this office. It is true that Nagarkar had accompanied the two Superintending Engineers on the morning visit to the Collector. At the same time, it must be remembered that Nagarkar was not present when the Collector told the engineers that he would warn people within a belt of 4 furlongs on either side of the river. At that very time, he was busy in talking on phone to Ghaisas who was the Sub-Divisional Officer, Mutha Canal. It is also true that he admitted that at 3-30 p.m. on the 11th he had met Khursale and Desai. He has, however, added that he did not come to know about the details regarding the Panshet situation and all that he learnt was that the situation was grave and serious. Nagarkar in answer to questions by Phadke admitted that there is one Sub-Divisional Officer, two Overseers, 4 clerks, 4 dafter clerks and 3 or 4 peons attached to the above office. He also admitted that the building of the Mutha Canal Office was washed away along with furniture. Part of the furniture and part of the records were subsequently recovered. Nagarkar added that during every floods, the records of the Mutha Canal Office are removed at higher levels and that it was reported to him by the Overseers that the record was partly removed on the 11th. He, however, had to admit that he was not sure about it. Then the following questions and answers took place between the Advocate and the witness :

“ Q. Why did you not give a direction that the records and the furniture from the Mutha Canal Office should be removed on the 11th ?

A. As Sub-Divisional Officer was in charge, I did not give any direction. I cannot say why I did not give such a direction to the S. D. O.

Q. Can we take it that you did not anticipate that this office would be submerged ?

A. No thought was given to this aspect of the matter.

Q. Why was no thought given ?

A. I cannot say.”

In answer to further questions, he maintained that part of the record was removed from that office. It must be conceded that answers given by Nagarkar are far from satisfactory. There is no justification for the way in which he has behaved in this matter. He ought to have given clear instructions to Ghaisas that the record should be removed from the office as there

was a likelihood of the office being submerged in water. One thing, however, must be noted in this connection and it is this, that Nagarkar had asked Sub-Divisional Officer, Ghaisas, to proceed immediately to Khadakwasla to carry out some of the instructions given by him. Accordingly Ghaisas was at Khadakwasla dam till 1-00 p.m. on the 12th. Nagarkar's failure to take steps to remove the records from the office must be judged in the context of the possible danger at Khadakwasla and the need of concentration of efforts in that respect. It must be noted that Nagarkar and his sub-divisional officer Ghaisas were preoccupied with the work at the Khadakwasla dam, such as keeping the gates open etc., from the 11th and it is possible that the comparatively minor danger of the records of the canal office being washed away was ignored. No inference can legitimately be drawn from this that the Superintending Engineers had not visualised the possibility of water spreading beyond Mutha Canal Office. The Counsel and the Advocate are responsible for having fallen into fallacy of considering that one mistake justifies the other.

## II. Cordoning and Other Security Measures

The D. I. G., Poona, was camping at Nagar on the 11th and 12th and on receipt of the information about the Panshet disaster, he returned to Poona some time in the afternoon. After his arrival in Poona, consultations were held between him, the D. S. P., and the Collector as to the line of further action to be taken after the flood receded. Heble in his written statement at paragraph 87 says that in the course of these consultations held at 8-45 p.m., it was decided that priority should be given to the task of rescuing marooned persons and the cordoning of houses and buildings which had collapsed or were rendered dangerous by the flood. He further says that accordingly, a wireless broadcast was issued to the entire personnel on duty. Heble also sets out the other decisions that were taken in this meeting. One of them was that the Police should take all possible measures to enforce strict night patrolling. The remaining decisions are not relevant for the present discussion. Again at paragraph 101 of his written statement, Heble says :

“During our round, (at 10-30 p.m. along with the D. I. G.) special attention was paid to ensure that the cordons around the affected areas were adequate and that night patrols and pickets were alert. Areas or points where reinforcements were necessary were noted down.”

This suggested that a cordon of policemen was thrown around the flood-affected areas or in any case around the houses that had collapsed or were on the point of collapse. Prabhakar in his deposition admitted that a decision was taken at 4-45 p.m. that areas where houses had collapsed or were likely to be collapsed should be cordoned off by the police and that the police should also undertake night patrolling. Heble was cross-examined with reference to these statements and the replies given by him may be summarised as follows :—

“I agree that the cordoning of the flood-affected areas was an important part of the Police duty. I did not think that cordoning of the areas that were likely to be affected by the floods was necessary before the

floods. I had given instructions to the Home Inspector on the night of the 11th to cordon off the flooded areas to prevent pilferage, theft and looting as soon as the floods receded. By cordoning, I do not necessarily mean that there should be a chain of policemen erected around the area. Generally, by cordoning, we mean that the approach roads for a strategic point to a particular locality are blocked or approached by posting pickets. After the floods, a literal cordon, that is, a chain of policemen, however, was erected by me personally around the Government grain godowns. According to me, while inspecting the flood-affected areas, I saw that the areas were protected in the manner I have stated. I deny that incidents of looting, theft or pilferage took place on a large scale in the flood-affected areas. Only 12 offences were reported on the 12th July and 6 on the 13th. Cordoning of the flood-affected areas was started after 5-00 or 5-30 p.m. No attempt was made to do so while the floods were still on. I maintain that the entire flood-affected area was cordoned off. I have not heard any complaints stating that the flood-affected areas were not cordoned off. My attention is invited to the following sentence in paragraph 87 of my written statement :

It was decided that priority should be given to the task of rescuing the marooned persons and the cordoning off of the houses and buildings which had collapsed or rendered dangerous by the floods.'

This cordon, according to me, was supplementary to the cordoning of the areas. The object of the general cordon was to prevent bad characters and intruders. Bad characters could be identified by the police themselves. By bad characters, I mean history sheeters and also persons of bad reputation. Local police are expected to know and sort out such persons. The object of cordoning of the dangerous buildings was to prevent occupants from entering the dilapidated premises. On the night of the 11th, we did not envisage the cordoning of the houses. At that time, we had no idea as to how many houses would collapse or be rendered dangerous for habitation. All the bridges in the city of Poona were cordoned off. So far as the new bridge is concerned, we had posted sufficient number of policemen to regulate traffic but ingress and egress were not prohibited. In respect of other bridges, ingress and egress were banned. After the floods receded, I took round in some of the flood-affected areas along with Collector. I noticed that some of the cordons would be more effective if they were strengthened. Accordingly, the D.I.G. gave instructions at 10-00 p.m. to strengthen the cordon. This aspect is emphasised in paragraph 95 of my written statement (sub-para. 1 and 2). Any person passing by the fringe of the flood-affected areas could notice the cordoning posted at the borders. What I mean to say is that he would see policemen posted at the street corners or other strategic points. He would not come to know that the policemen were performing the function of cordoning unless he tried to enter the areas cordoned."

It will be at once evident that D.S.P. Heble has tried to give an extremely original definition of cordoning. The word 'cordon' is quite common

and its meaning is wellknown. It is not even necessary to refer to the dictionary for finding its meaning. But since Heble has tried to give the definition which is ingenious and original, I will as well refer to the meaning given to the word in the Oxford Dictionary. "Chain of Military Posts, Line or circle of Police etc." Heble began by making a tall claim that he had given instructions to the Home Inspector to cordon off the flooded areas to prevent pilferage, theft, looting as soon as the floods receded. Having realised the hollowness of this tall claim, he proceeded to give his explanation of cordon and said that by cordoning, he did not mean a chain of policemen erected around the area but he meant that the approach roads or strategic points of a particular locality are blocked by posting pickets. By taking recourse to this absurd definition of cordoning, he again proceeded to lay a still more tall claim by saying :

"I maintain that entire flood-affected area was cordoned off."

According to Heble, the entire area must be deemed to have been cordoned because the roads leading to these localities were blocked by posting pickets. It is necessary in the first place to remember that no such claim was even hinted in his written statement. The only claim made in the written statement was that at 4-30, it was decided in consultation with the D.I.G. and the Collector that the houses which had collapsed or were about to collapse should be cordoned off. It does not appear that even this decision was implemented. But Heble proceeds to say that not only the entire flood-affected areas were cordoned off but that in addition to the above the houses that had collapsed or were about to collapse were also cordoned off and the cordoning of the houses was supplementary to the cordoning of the areas. He then tries to make a distinction between the first cordon and the second cordon. According to him, the first cordon was meant to prevent the ingress of bad characters and intruders in the flood-affected areas and the object of the second cordoning was to prevent occupants from entering the dilapidated premises. I have yet to hear that a cordon makes a distinction between good characters and bad characters and whereas the first set of people are allowed to enter, the second set are prevented from entering the areas. It is ridiculous for Heble to suggest that each and every constable who forms part of the picket knows who are good characters and who are bad characters in the city of Poona. He has given a very wide definition of the word "bad character" by which, according to him, is not only meant the history sheeters but men of bad reputation. Is it possible for each and every constable to know which man bears a bad reputation and which man bears good reputation? It is necessary to remember that according to Heble, police constables from other places were also on duty in the flood-affected areas. How would these constables know about bad characters in flood affected areas? At paragraph 101, Heble has specifically stated that in the course of the round at 10-30 p.m., special attention was paid to see that the cordons around the affected areas were adequate. This obviously has a reference to the cordons spoken of at paragraph 87. Heble, however, tries to suggest that all that was decided at the time of the 10-30 p.m. round was to strengthen the cordons and by strengthening the cordons, he meant that policemen

were posted at streets corners or other strategic points. He admitted that one would not come to know whether the policemen were performing the function of cordoning unless he tried to enter the areas concerned. Heble claimed that all the bridges in the city of Poona were cordoned off. He then explained that sufficient number of policemen were posted at the new bridge to regulate traffic. In respect of other bridges, even ingress and egress were banned. It is interesting to refer to what Pharate has said on this point. Says Pharate :

"I started for the Police Headquarters at about 6-00 p.m. (from the Collector's office). I wanted to go to the Headquarters *via* Somwar Peth, Rasta Peth, Phadke Houd and Jijamatabag, but at Jijamata, I was held up. I was seeing crowds at different places on the roads. These crowds were in the flood-affected localities. I then tried to go *via* the Lakdi bridge, but I was told that it had become weak. There were some crowds on the Lakdi bridge, but not large. These people were moving freely to and fro across the Lakdi bridge. I again say that nobody was moving across Lakdi bridge. I say that people were moving freely in the flood-affected areas. I returned to the office at 8-00 or 8-30 p.m. I came from Vishrambag Wada. I came to the office *via* Laxmi Road, Somwar Peth and Phadke Houd. I was moving in a jeep. On my return to the office, I was seeing people on the streets, but not big crowds."

This exposes the hollowness of Heble's claim that there were cordons around the flood-affected areas, as also his claim that pickets were posted blocking ingress and egress to and from the flood-affected areas.

Before coming to other aspect of the D. S. P.'s evidence on this point, it is necessary to refer to the evidence given by S. G. Barve. Of course, S. G. Barve's evidence has reference to what he saw on the morning of the 13th. Barve says :

"On the 13th morning, I moved through the floodstricken areas of Poona along with the Chief Minister. I did not see that the policemen had put a cordon around the entire flood-affected areas. There were policemen here and there. I could see people moving about in those places. I did not notice any organised rescue party either of the police or of the Home Guards during that morning. I was moving with the Chief Minister at about 11-00 or 11-30 that morning. In the afternoon of the 13th, I may have moved about on my own in some of the flood-affected localities. In the early hours of the 13th, I visited the Lakdi bridge, the Sangam bridge and also the Railway bridge along with some engineer friends. While going to the bridges, I passed through the flood-affected area. At that time also, I did not notice that the flood-affected area was cordoned off by the police. I did not notice that any portion of the flood-affected areas which I visited that morning was placed under a military guard either. The Chief Minister held a hurried conference on the night of the 12th in the Police Headquarters. I was present in that conference. I have no recollection of any mention having been made by the Police officers present in the conference about any measures having been adopted by them to safeguard the property and

houses in the flood-affected area ..... I have no recollection whether any question was raised in the conference about the necessity of taking steps to safeguard the property in the flood-affected area during the time when I was in the room ..... After the conference was over, I went to one or two bridges. I visited the Sangam Bridge and the Old Railway Bridge. I did not notice any cordon around these bridges. There may have been some policemen at those bridges .....

Barve's evidence gave a knock-out blow to the theory of cordoning and that is why Heble resorted to the verbal jugglery regarding the meaning of 'cordoning'. A specific question was asked to Heble with reference to what Barve stated and Heble's replies are typical of his audacity :—

“Barve says that he did not notice any cordoning in the areas through which he toured and the bridges he visited. The reason may be either that he was too pre-occupied or being a well-known personality he would not be prevented from entering such localities.”

The statement from Barve's deposition set out above was then put to Heble and he was asked to offer his explanation in regard to the same. Heble says :

“The one explanation that I can offer is that apparently the definition of cordon which was present in the mind of Barve is different from mine. My attention is further invited to the following passage in the deposition of Barve :—

‘By cordon, I understand the encirclement of an area by Police or military so as to prohibit passers by from entering inside the area. Encirclement does not necessarily mean the policemen standing arm-in-arm. I saw people moving about in the course of my visits to the bridges on the 12th night. I cannot say whether there were only one or two policemen at these bridges or more.’

I still maintain that the definition of Barve is different from mine.”

When his attention was drawn to paragraph 101 of his written statement, Heble says :

“I do not think that this (statement) implies that the cordon already set up was inadequate.”

With reference to certain instructions alleged to have been given by him for tightening up of the cordon, Heble was again questioned and this is what he says in that respect :

“After the departure of I. G. P. at about 10-00 p.m. on the 13th, I held a meeting of the officers and police Inspectors on flood duty. One of the instructions given to them was the tightening up of the cordon with a dual object of keeping out pilferage and bad characters. These instructions were thought necessary because in the course of my round on the 13th, I heard complaints of pilferage at one or two places. And, secondly, it was necessary to ensure complete isolation of the flood-affected areas so as to facilitate the army personnel to carry out their work of demolition of dangerous buildings and clearing of the debris. Pilferage took place even when there was cordoning in some areas. I have not heard any

complaints that the cordons were inadequate nor that there was a large scale pilferage on account of the absence of cordoning."

Reading between the lines, it appears to me that if at all any attempt at cordoning was made, it must have been for the first time, on the 14th. It may be that certain policemen were kept at the entrances to the bridges or street corners. But to make a claim that cordons were thrown off on the night of the 12th and during the whole of the 13th is highly pretentious and evidently false.

With regard to the evidence about picketing of the approach roads and streets, Heble was closely questioned and this is what Heble has to say on this point :

"Except 3 or 4 of the police constables of the Pharaskhana Police Station, none of them has stated in their reports that he was given the work of picketing the approach road and the streets."

Heble, therefore, comes forward with an ingenuous explanation and says that these reports were not intended to cover all the details and were intended for considering as to whether any meritorious work was done by them. How false this excuse is can be easily seen from the reports which speak of the details in regard to the work done by them. Beyond Heble's word, there is no evidence to show that the reports were called for merely for the purpose of determining who had done meritorious work. Evidently, the reports from the Police were called for because a Commission of Enquiry was already appointed and Heble wanted to have all the details of the work done by his department, just as the Collector and the Municipal Commissioner also wanted to have all the details of the work done by their departments in the shape of reports of their subordinates. In answer to further questions, Heble admitted :

"Similarly, except 4 or 5 constables none has stated in his report that he was detailed for cordoning the affected areas or affected houses. The reason for this is the same as I have mentioned above. I have not submitted any report as such to my higher authorities in regard to the floods and the work done by the police at any time. The weekly confidential diary did contain some information in that respect but it did not give all the details. This confidential diary has not been submitted to the Commission. Without looking in the confidential diary, I cannot say whether I have mentioned in it the fact that flood-affected areas or houses were cordoned."

### III. Overall assessment of the work done by Heble

As stated above, Heble has submitted no report to his superior officers in regard to the work done by him or his department during the floods nor has he produced the weekly confidential diary. A specific suggestion was made to Heble, namely, that all the preparations he had made were intended to meet the floods created by heavy rains. He denied that suggestion. He also denied the suggestions made to him that he never realised the gravity of the situation till the waters rushed in the streets of Poona. According to him, there was



no question of consulting the Municipal engineer or other engineers with a view to evaluate the gravity of the situation because according to what he gathered at the Commissioner's meeting, the Superintending Engineers themselves had plainly stated to the Collector that they were not in a position to estimate the extent of the floods. He admitted that he did not remember whether he gave instructions for the regulation of traffic on the 12th. He then tried to throw the responsibility on the Traffic Inspector by saying that he was in exclusive charge of traffic branch and the regulation of traffic. He was, however, forced to admit that in an emergency he could intervene and give instructions to the Traffic Inspector. He admitted that in the morning of the 12th, his children started going to the school at about 8-15 or 8-30 according to usual course. Heble says that while they were taken in his car by the Police driver, the driver having heard warning regarding the impending floods took the car back with the children to his residence. He admitted that in the morning when he heard about the breach of the Panshet dam he did not realise that any of the bridges would be submerged. He has further admitted that a parade of the Police Officers was held as usual from 6-30 to 8-30 a.m. on the 12th. He has also admitted that no work was assigned to either of the 2 S. Ps., 2 A. S. Ps., and 1 D. S. P. who were working under him. He ascertained that he did not know on the night of the 11th or even on the 12th that the Home Guards and the military were alerted during the floods of 1958. He admitted that he knows that army men are well trained for carrying out rescue operations. Then the following questions and answers were exchanged between the Commission and Heble :—

“ Q. Why did you not consider it necessary or prudent to secure the help of the Army on the night of the 11th also ?

A. The situation as we understood it did not require the help of the army.

Q. Would any harm have been caused if army help would have been secured ?

A. No harm would have ensued.

Q. At least as a matter of abundant caution, why did you not consider of alerting the army and securing their help in case of necessity, particularly when you knew that the army help would be available to Poona within a few hours of the alert ?

A. I did not consider it in any way necessary on the night of the 11th.

Q. Was it due to over-confidence or under-estimation of the situation ?

A. It was due to neither. I won't accept the proposition that to be able to carry on rescue operation during night time it requires special training. I did not suggest that the help of the fire brigade people should be taken. I do not accept the suggestion that during hours of the night, the sense of direction would be lost particularly, in respect of those who are familiar with the locality and who are moving through them.”

At a later stage, he admitted that till 10-00 A.M., it had not struck him or the Collector to requisition the military. He also admitted that after 10-00 on the 12th, he did not realise that more police force was necessary to meet the situation. He also admitted that policemen from Ahmednagar, Satara and the State Reserve Police Force were requisitioned. The number of police whose help was taken from outside came to 600 on the 13th. These answers illustrate the proposition laid down by me above, namely, that there was lack of fore-sight, lack of proper organisation and indifference in the implementation of whatever decisions were taken in the matter of giving warnings and arrangements for evacuation.

Some of the answers given by Heble will illustrate his indifference and defiant attitude to the enquiry conducted by the Commission :

“So far, I have made no enquiries as to whether all the schools started their work on the 12th according to the normal practice. I am not in a position to accept or deny the assertion that all the schools started their work according to the usual practice on the 12th. I can neither accept nor deny the suggestion now put to me that school No. 19 in Dhangar Ali, Narayan Peth, started its work in a normal course nor whether the boys got stranded on the first floor as a result of the floods and required to be evacuated. I have made no enquiries in that respect so far. I am not in a position to say whether news about the danger to the Panshet dam was known to all or majority of the policemen in the police lines. More than 10 Prosecuting Jamadars have been working in the Magistrates' Courts in Poona I cannot say how many of them attended the Courts at the usual hour on the 12th.”

Again, later Heble says :

“I deny the suggestion put to me that till 8-30 or 9-00 A.M. on the 12th, no information was given to Police Stations that the Panshet dam had breached. Mr. Sidiki was one of the Sub-Inspectors attached to the Pharaskhana Police Station. As far as I remember, Sidiki was in charge of Padamji Gate Police Chowkey. There are telephones in all the chowkies in Poona, but the telephone broadcast system covers only 8 Police Stations and not the chowkies. Information is required to be conveyed individually to each chowkey on the phone. Kurdikeri, Sub-Inspector, is attached to Kirkee Police Station. He attended the parade in the morning. I do not know whether he attended the Sessions Court in the afternoon. Waghmare, Inspector was in charge of Khadak Police Station. He has said that he attended the parade in the morning. I do not know whether he was not aware till 11-00 A.M. about the breach of the Panshet dam. Pikale was in charge of the Local Intelligence Branch.”

As regards his statement that about 233 Home Guards joined the police by about 1-00 or 1-30 P.M., Heble was questioned on this point by the Commission's counsel and this is what he has to say :

“After the receipt of Bhalerao's message ‘the people should be evacuated to highest places’, I got in touch with Home Guards at Headquarters and requested them to send to the assistance of police as many

Home Guards as possible. The Home Guards started coming to help the police within about half an hour of this message. They went on coming in small batches. Till about 1-00 or 1-30 P.M., about 233 Home Guards joined the police to assist them."

Then he had to make a very important admission :

"Had the Home Guards been alerted on the night of the 11th, they would have been available to help the police in the early hours of the morning of the 12th. The Home Guards were not, however, alerted on the night of the 11th because their help was not considered necessary."

Mr. Phadke on behalf of the Citizens' Committee put a specific suggestion to Heble saying that no Home Guards went to the Police Headquarters on the 12th. He denied that suggestion. He admitted that some Home Guards may have assisted the citizens on their own. He asserted that all the Home Guards who reported themselves at the Headquarters were in uniform. But he admitted that there is no record to show which Home Guards reported themselves at the Headquarters on the 12th. He was also forced to admit that he has not mentioned in his written statement that 50 or 60 Home Guards had come to the Police Headquarters on the 12th.

The answers given by Heble in regard to his statement about the number of vehicles indicate that he was prepared to make any statement regardless of whether it was supported by documentary evidence. In answer to question by the Commission whether the figures of vehicles mentioned in paragraph 6 in his written statement were mentioned from memory, Heble replied :

"I won't accept that the figures of vehicles mentioned by me at paragraph 6 of my written statement are from my memory. I have mentioned these figures from the actual use made of these vehicles on the 12th. The documents concerned are log books of my department. So far as the vehicles of the other departments are concerned, I got the figures confirmed from the Divisional Commissioner. I consulted him while preparing my written statement. The Commissioner did not show me any documents. He only mentioned the figures orally."

At a later stage, Heble had admitted :

"I have submitted no statement showing how many vehicles had to be used on the 12th for evacuation purposes. The log books of these police vehicles show these details regarding the work done by them. I have not, however, produced all the log books."

It is thus evident that Heble's arguments moved in vicious circle. When asked to say how many vehicles were reserved on the 11th, he says that he ascertained the number from the number that was actually used on the 12th. He did not produce the log books of the 55 vehicles alleged to have been kept ready on the night of the 11th, nor has he produced the log books of the vehicles which are actually alleged to have been used on the 12th. He admitted that the log books would provide a clear and incontrovertible evidence about the use made of those vehicles. He has not offered any explanation as to why he did not produce the log books in regard to the vehicles mobilised on the 11th or used on the 12th. The reports and the oral evidence does not indicate that more than 3 or 4 vehicles were used

for the purpose of evacuation. All these circumstances indicate that Heble wants the Commission to place implicit trust on whatever he says even if what he says amounts to a hollow claim and an empty boast. The Advocate on behalf of the civil authorities has put forward an ingenuous argument saying that the fact that the casualties in the City of Poona were very few shows that not only proper warnings were given but also proper arrangements were made for evacuating people. It is argued that but for those arrangements many people would have lost their lives during the floods. This argument really takes my breath. Admittedly, floods came during day time. Admittedly, the rise in the floods was by stages. People were watching the rise of floods. It is not as if the floods entered the house of the people all of a sudden and took them unawares. It is not as if the floods pursued the people like a tiger bent upon taking the life of its victims. When people are wide awake and when they are watching the situation, when they see the rise of water in the river from stage to stage, they would certainly take precautions to see that they themselves will not submerge in water. Even if the rush of floods is sudden, still the instinct of self-preservation will operate and people will take to their heels for saving their lives on seeing that the floods were coming. Had the floods come during the night time, then, possibly, the argument that very few lives were lost is a tribute to the efficient organisation of rescue operations would be valid. On the other hand, the fact that at least some lives were lost, may be 30 or 40, is an indication that there was no proper organisation for evacuation and rescue. It is true that many people have been rescued, some were marooned and some stood the danger of being marooned. At the same time, it is clear that many lives were saved by the efforts of volunteers and voluntary organisations. It is ridiculous for the Police Department to take credit for saving the lives of all persons who had been marooned in the course of the floods.

## SECTION 20

## THE INCIDENTS OF THE 13TH

The verdict passed by me above on Heble's achievements would be fully vindicated by referring to the strange happenings of the 13th. I am devoting so much space on Heble's work, because it is on his performance that the question about the adequacy of the steps taken by the civil authorities on the 12th and 13th mainly turns. On the morning of the 13th, the Chief Minister was taking rounds of the flood-affected areas in the company of Mohite, Heble, Prabhakar and S. G. Barve. As the party was taking the rounds they came across people running amuck in panic. S. G. Barve in his deposition states :

"When I was going round along with C. M., we came across people running amuck in panic. They were shouting 'Khadakwasla dam had breached and floods are coming'."

Prabhakar in answer to questions in cross-examination stated :

"On the 13th morning, I was moving with the Chief Minister through the flood-affected areas. Mr. Barve was also there with the Chief Minister, as also the Divisional Commissioner. We visited the following localities—Part of Kasba Peth, part of Mangalwar Peth, but we could not visit Shaniwar Peth or Narayan Peth. *There were normal activities in these places and people were allowed to come and go in these localities.* I noticed large crowds on the Nava Pul. I cannot say whether there were crowds on the other roads near the flood-affected areas. In the course of these visits, crowds used to stop the Chief Minister and *tell him in violent language that proper warnings were not given about the oncoming of the floods and that they were kept in dark.* There were also several other complaints from the people."

It is significant to note that the scare which made the people to run amuck was about the alleged breach of the Khadakwasla dam and the consequent release of floods. People apprehended that there would be a fresh wave of floods. As a matter of fact the Khadakwasla dam had breached at about 2-00 or 2-15 P.M. on the previous day. The second wave of floods that visited the City of Poona was really due to the breach of the Khadakwasla dam. It is the case for the civil authorities that warnings were given to the people in regard to the breach of the Khadakwasla dam. In spite of this, how is it that rumours were set afoot on the morning of the 13th and how is it that people were inclined to believe those rumours and really acted on those rumours? Mohite was cross-examined on this point and he admitted :

"I was surprised to see the scare among the people on the 13th. When we noticed crowds running amuck away from the river side saying that water was to come from Khadakwasla dam. The C. M. also was taken by surprise. The C. M. did not ask me as to how it was that people were still under the impression that Khadakwasla dam contained water and water would come therefrom. The C. M. did not ask me whether warnings were given to the people on the day or on the night of the 12th that the Khadakwasla dam had breached in the morning of the 12th."

Mohite admitted that he was taken by surprise to see that people should run away on the basis of a false rumour that water was coming from the Khadakwasla dam. He also admitted that C. M. was also taken by surprise at this odd behaviour of the crowds. Yet he has the audacity to say that the C. M. made no enquiries as to how such a fantastic phenomenon could occur, if warnings had been broadcast on the previous evening or night regarding the breach of the Khadakwasla dam. The replies given by Heble in answer to questions in cross-examination reveal Heble in his true colours : Says Heble :

“I was moving along with C. M. and his party on the morning of the 13th. We saw a very large number of people running helter skelter with their belongings in the Mangalwar Peth. This was between 9-30 and 9-45 A.M. Later on, I learnt that this kind of scare was fairly widespread throughout the City. The C. M., the Collector, the Commissioner, Mr. Barve and myself were moving. Some of us were asking questions to the people who were running away. I remember one or two persons telling that they had heard that there was a further breach in the Khadakwasla dam and they were afraid that there would be another flood.”

Again, at a later stage of the cross-examination, Heble says :

“I was with the Chief Minister in the Mangalwar Peth when people were running in scare. Nobody abused or uttered angry words about the authorities in Poona for their failure to give proper warnings and take proper steps within my hearing. Everyone of us was asking the people not to run away. But the people were not in a mood to hear us. It did not strike me that this scare must have been created because proper warnings were not given on the 12th disclosing the fact that the Khadakwasla dam had breached and the lake had become almost empty. Our warnings on the previous day did state that the Khadakwasla dam had breached. This warning did not refer to the lake having been practically emptied.”

Heble's statement that although he was moving with the Chief Minister he did not hear what Prabhakar says he heard, was *prima facie* very strange. Therefore, Phadke further cross-examined him for further clarification. Mr. Phadke put Prabhakar's statement to the witness and asked him his elucidation in regard to the same and this is what the witness says :

“On the 13th morning, I was moving in the company of Chief Minister and the Collector. My attention is invited to the following statement of Prabhakar, the Collector :

“In the course of this visit crowds used to stop the Chief Minister and tell him in violent language that proper warnings were not given about the oncoming of the floods and that they were kept in dark. There were also several other complaints from the people.”

The distance between the Chief Minister and myself during this visit used to vary from place to place. It varied from 2 feet to a maximum

- Q. If it was more than 10 ft., it is impossible to say without violence to language that you were in the company of the Chief Minister?
- A. Occasionally, the distance between me and the Chief Minister may have been more than 10 ft. But I used to make up that difference. I cannot say by how much the distance exceeded 10 ft. I cannot say whether it was more than 15 ft. or less than 10 ft. Mr. Barve was in close proximity with the Chief Minister. So was the Collector up to a certain extent. I still maintain that I was unable to hear the complaints of the people.
- Q. Can you assign any reason for not hearing these complaints when other members of the party, such as, for instance, Barve, the Collector, heard the same?
- A. That may be because I was busy persuading panicky people not to run away."

I do not know whether Heble really believes that these answers would deceive anybody. I feel that these answers would not even deceive Heble himself. Having admitted that he was moving in the company of the Chief Minister he tried to get over the difficult position created by the straight admissions given by Prabhakar, namely, that people were lodging angry protests in regard to improper warnings by saying that at some points he was a little further away from the Chief Minister. At the same time he tried to dodge the issue by saying that he could not say whether the distance varied between 2 ft. and 15 ft. or more or less. In the first place these answers indicate the defiant attitude adopted by the D. S. P. and in the second place illustrates the irresponsible manner of giving answers to the questions put.

A very interesting and intriguing question has arisen as to who was responsible first for originating this scare and second for spreading the same. When Heble told the Commission that one or two among the persons who were fleeing said that they had heard about the further breach of the Khadakwasla dam, and they were afraid that another flood would be coming, he was asked to say whether this scare was started by the Police themselves, and the answers given by Heble deserve serious consideration.

"None of them said that this scare was started by the Police themselves. I have heard later that some policemen had given a warning to the people on the morning of the 12th that there had been a further breach in the Khadakwasla dam. This warning was given after panic started. This warning might have somewhat aggravated the panic and added to the confusion. I deny the suggestion put to me that it was really to policemen who were at the bottom of this false rumour and the resultant panic."

Heble had to admit that some policemen did give warning that Khadakwasla dam had broken but he suggested that this warning was given after the panic had already originated and spread. Very reluctantly he admitted that this warning may have aggravated the panic and added to the confusion to a certain extent. Heble's attention was then drawn to a certain entries marked in red pencil in the V. H. F. control room log book (Ex. 554) under the date 13th July 1961. Heble stated that it was either on the 13th or on the

14th that he learnt, that the police had given warnings to the effect that there a further breach at Khadakwasla dam and that there was a possibility of more water coming. When asked to state whether this struck him as strange or whether he was taken by surprise when he heard this, Heble gave a reply which is characteristic of his levity, and light-heartedness. He said :

“This did not strike me as strange in any way nor was I taken by surprise. I agree that it did not strike me as a normal piece of news. At that stage, I was not able to say whether that news was true or false. I again say that it struck me as false. I did realise that these messages on the morning required further investigation at my hand.”

Heble made an unsuccessful attempt saying that at that stage i.e. on the 13th or 14th when he heard the news he could not make up his mind as to whether that news was true or false. This is fantastic nonsense. Heble at any rate knew that the Khadakwasla dam had breached on the 12th and that the reservoir had practically emptied. Therefore, any piece of news spread on the 13th suggesting that the dam had breached or, as Heble chooses to call it, there was a further breach of the dam on the 13th and fresh floods were coming, would be dismissed by him as meaningless. Certainly he was the best person to know that that news was false. Yet he hesitated to say in the first instance at any rate that he was not able to say whether the news was true or false. Does this not indicate a guilty consciousness on Heble's part? Or was it an attempt to shield the police officers who were responsible for spreading that news? He was however forced to admit that the news struck him as false. This admission does no credit either to Heble's intelligence or to his integrity, both of which become suspect on account of his light-hearted dialectical exercise. Finally he had to admit that he felt it necessary either on the 13th or on the 14th that the matter required investigation and entrusted the matter to Gharpure, Dy. S. P. He has admitted that Gharpure submitted a report to him but that he has not produced that report before the Commission. In giving the details of this enquiry, Heble states as follows :—

“This enquiry was started within a few days after the 13th. I am definite that this enquiry was started before the appointment of the Enquiry Commission. The appointment of Enquiry Commission was in the air some time after the 12th. I cannot say whether our enquiry was started before the rumour about the appointment of the Enquiry Commission. Our enquiry was completed within a day or two. I cannot say how many witnesses were examined by the Dy. S. P. The enquiry officer examined witnesses orally. No statements were recorded.”

On the 13th itself the Chief Minister had announced that a Commission would be appointed to enquire into the Panshet disaster. That being the case, it is quite clear that the enquiry whatever its character, was conducted by Gharpure in the full knowledge that there was going to be an Enquiry Commission. Yet Gharpure has not recorded any statements and even the D. S. P. is not in a position to say how many witnesses were questioned by Gharpure. It is significant that the report submitted by Gharpure to the D. S. P. has not been produced before the Commission. That report perhaps would have revealed which witnesses were examined and what



transpired in the course of their evidence. Heble admitted that he referred two questions to Gharpure for enquiry, (1) that the police were responsible for the rumour leading to the panic, (2) that the scare was started by goondas so that they might succeed in pilfering or looting the properties. He has however admitted that the enquiry did not refer to the entries in the log book and he did not give any direction that the entries should be the subject matter of Gharpure's enquiry. Again he dodged the issue by saying that he did not remember if Gharpure made enquiries into the correctness of the entries in the log book. This so called enquiry by Gharpure is evidently an eye wash. Gharpure did not record the statements of any witnesses. We do not know whom he questioned and what are his conclusions. No explanation has been offered as to why Gharpure's report has not been produced before the Commission. Had this report been produced, either the report would have been admitted in evidence along with other reports or Gharpure would have been called as a witness. The reason why a curtain is sought to be drawn over the enquiry alleged to have been made by Gharpure is to be found in the nature of the entries themselves. That is why Heble cunningly stated that he did not refer the correctness of the entries to Gharpure's enquiry. I cannot understand how Gharpure could proceed with the enquiry without ascertaining whether the entries contained in the log book were correct or not. The enquiry, if any such enquiry has been made at all by Gharpure, is a hoax.

Let us now turn our attention to the entries in the Vishrambag V. H. F. control room log book of the date 13th July 1961. The entries are exhibited as Exs. 554 and 555. The entry at Ex. 555 as rendered in English runs thus :—

Time	To	From.	Particulars	Int
09-25	C	B	The water has come towards Narayan Peth. People are running towards the City.	
	CQ	C	The water is rising in Narayan Peth ; people are running.	

Heble explained that the letter 'C' stands for V. H. F. control room, and letter 'B' stands for wireless mobile van BAKER, 'CQ' means, broadcast, 'CH' means, wireless vehicle CHARLIE, 'RC' means, received correctly, and 'HQ' means Emergency Control Room. The entry means that the news was relayed from the wireless mobile van in Narayan Peth to the V. H. F. control room. On reading the above entry by itself it is clear that whoever relayed that news, purports to have done so as an eye-witness. Because what the entry says is, 'water is coming towards the Narayan Peth and people are running'. The second entry means that from the V. H. F. Control Room, the above news was broadcast to all who were on the circuit. The entry gives the text of that broadcast, 'the water is rising in Narayan Peth, people are running'. That means that the message contained two items, (1) that water was coming to Narayan Peth, (2) people were running. None of these entries says that people were saying that water is coming while they were running. The fact of water coming is stated as a fact existing, 'sui generis'.

Let us now turn to the entries at Ex. 554. They are, as rendered in English, as follows:—

Time	To	From	Particulars	Int
09-30	HQ	C	A panic has arisen among the people as a result of increase in the level of water. People are shouting and running.	
	C	HQ	RC. We are informing all responsible officers accordingly.	
	B	C	Is the water level increasing ?	
09-31	C	HQ	The Khadakwasla dam has again breached to certain extent. There is a possibility of flood water coming, and there is increase in water.	
	HQ	C	RC	
	CQ	C	The Khadakwasla dam has again breached to some extent. There is a possibility of floods coming. Therefore, give warnings to all people to remain vigilant and stop traffic on the New Bridge.	

It is clear from the entries (Ex. 554) that the V. H. F. control room relayed the news to the Headquarters about the panic created in the minds of the people by the increase in the level of water. On this the Emergency Control Room informed V. H. F. control room that the news will be broadcast to all responsible officers. Then the V. H. F. control room made a query to the wireless mobile van BAKER asking whether level of water was rising. This is the substance of the messages appearing under the time 09-30. Turning to the messages under the time 09-31 we find that the Headquarters informed the V. H. F. control room that the Khadakwasla dam had broken to a certain extent and the flood water was increasing. To this the V. H. F. control room replied that they had received the message correctly. Then again the V. H. F. control room relayed the news to all the mobile vans that Khadakwasla dam had breached to a certain extent and there was a possibility of flood coming and asking all people to remain vigilant. It also gave a direction for stopping traffic on the New Bridge. What is the impression that one gathers on reading all these messages, Exs. 554 and 555? It is quite clear that the operator in wireless mobile van BAKER saw people running away in panic and relayed the news to the V. H. F. control room saying that water was coming in Narayan Peth and people were running in panic. It is significant to note that this was at 09-25. Five minutes thereafter the V. H. F. control room itself tells the Emergency Control Room that the panic has been created by the rise in the level of water. It was on the basis of the news received from the V. H. F. control room that the Headquarters assured the V. H. F. control room that all responsible officers would be informed. One minute thereafter, i.e., at 09-31, strangely enough, the Headquarters transmitted the news to the V. H. F. control room saying that the Khadakwasla dam had broken to a certain extent and flood water was rising. Immediately, on receipt, the V. H. F. control room transmitted the news to all the wireless mobile vans saying that the dam had breached and there was possibility of the floods coming and therefore people should be vigilant. Heble has

explained that the V. H. F. control room is always under the charge of a Sub-Inspector. He is, however, not in a position to name the Sub-Inspector, who was holding charge of the V. H. F. control room on the 13th. According to Heble, S. K. Kulkarni, Superintendent, Crime Branch, C. I. D., was in charge of the emergency control room from the 13th morning. On the basis of this reply, the Commission's counsel has argued that in the last analysis, S. K. Kulkarni, who was in charge of the emergency control room from the morning of the 13th, may be responsible for broadcasting the news to all the wireless vans at 09-31 hours saying that the Khadakwasla dam had breached and there was a possibility of floods coming. S. K. Kulkarni has not been examined in this case. There is no evidence to show that this particular message was originated by S. K. Kulkarni. We do not know whether S. K. Kulkarni was sitting in the same room where the apparatus was located nor do we know whether the operator obtained instructions from S. K. Kulkarni, before sending the instructions to all mobile vans. The Emergency Headquarters have broadcast the information at 09-31 hours i.e. within one minute from the receipt of the news from the V. H. F. control room. There is no evidence to show as to who was operating on the wireless set up in the Headquarters. Significantly, his report has not been produced. Merely because S. K. Kulkarni was put in charge of the emergency control room, it does not follow that he was responsible for that news. Whatever that may be, it is quite clear that the Police Department is responsible for the news that was relayed on the morning of the 13th at about 9-30 or so, saying that there was fresh breach of the Khadakwasla dam and that floods were coming and therefore people should be on their guard. It is futile, as is sought to be done by Heble, to attribute the responsibility for this rumour to the people in Narayan Peth. Assuming that operator in the mobile van BAKER saw crowds running amuck saying that water was coming, was it not the duty of the police to ascertain from the V. H. F. control room as to whether there was any substratum of truth in the rumour. The vans that were operating on the 13th must be deemed to have heard on the 12th that the Khadakwasla dam had already breached and the reservoir had become practically empty. Assuming that the mobile vans did not know anything about this, at least the V. H. F. control room was expected to know about it. How could the V. H. F. control room take this rumour on trust and proceed to act upon the same? Does not this bungling suggest that the news about the breach of the Khadakwasla dam was not even known to the responsible quarters?

In the light of these entries, let us now see what Heble has to say on the point. Heble has tried to absolve the V. H. F. control room of any responsibility in this matter by saying that the news emanated from the mobile van working at Narayan Peth and the operator of the mobile van gave that news on the basis of what he actually saw was happening in the Narayan Peth, namely, people running amuck crying that water was coming. It is however significant that what Heble calls the source of the news (Ex. 555) nowhere makes any mention of the breach of the Khadakwasla dam. All that it says is water was coming in Narayan Peth. What the entry really means is that people were saying, while they were running, that water had

come to Narayan Peth. Now how is it that this rumour of water having entered Narayan Peth was eventually linked up with the breach of the Khadakwasla dam? Has the D. S. P. offered any explanation on that point? The Commission, therefore, had to put pointed questions to Heble and it is worth while to set out the questions and answers :

“Q. Do you realise that the news sent out from ‘B’ to ‘C’ at 09-25 hrs. makes no mention of the further breach of the Khadakwasla dam? Do you still maintain that this is the source of news at Ex. 554?”

A. I still maintain that that is the ultimate source of all the subsequent news. I admit there is no other evidence to show that the news about the Khadakwasla dam emanated from the citizens living in Narayan or any other Peth.

Q. Why do you say that the news sent from ‘B’ to ‘C’ at 09-25 hrs. marked in red pencil, Ex. 555, is the ultimate source of the news at Ex. 554?

A. (1) The fact that people started running first in Narayan Peth appears clear from the entry at Ex. 555.

(2) Subsequent enquiries also show that this was the place where the rumour about the breach of the Khadakwasla dam had started.

Q. That means, that you are relying on what transpired in the police enquiry held by Gharpure, Dy. S. P.?

A. Yes. That is correct.”

Heble started by making a claim that there was a rumour in the Narayan Peth to the effect that Khadakwasla dam had breached and water was coming and that, that was the ultimate source of the news relayed from the V. H. F. control room and the emergency control room. Under the impact of the cross-examination he had to resile from this position and admit that there was nothing in the news relayed by the mobile van at 09-25 hrs. to show that people were saying that Khadakwasla dam had breached. Heble also admitted that there was no other evidence to show that the news about the Khadakwasla dam emanated from the citizens living in the Narayan Peth or any other Peth. He had finally to rely upon what transpired in the enquiry held by Gharpure for saying that the rumour that the Khadakwasla dam had breached first emanated from the citizens of Narayan Peth. I have already pointed out that Gharpure’s report is not before the Commission. Gharpure has not been examined in this enquiry. Gharpure has not recorded any statements of any witnesses. There is nothing to show whom he questioned and what conclusions he arrived at. In the circumstances, the D. S. P. wants us to accept his uncorroborated statement, namely, that it was in the course of Gharpure’s enquiry that it transpired that the rumour about the breach of the Khadakwasla dam started in Narayan Peth. What a ludicrous attempt to justify what is unjustifiable? It would have been straight-forward on the part of the D. S. P. to have acknowledged gracefully the mistake committed by his department. The D. S. P. of course did not do so because the implication would have been very serious. That implication would be that the news about the breach of the Khadakwasla dam was not announced to the people in the City of Poona. It is clear

from the evidence of J. S. Tilak that people in Narayan Peth were shouting that the police themselves were spreading the news that the Khadakwasla dam had breached and they were fleeing under the very nose of Dy. S. P. Gharpure. The fact that police were so sedulously spreading the news, accompanied by the fact that people so readily believed it, casts serious doubt on the publication of the news of the breach of Khadakwasla dam on the previous day. There cannot be a greater condemnation of the conduct of the Police Department and, in particular, the conduct of the D. S. P. than the rumour that was so assiduously broadcast by the police to the citizens. This itself is a very serious matter and, apart from whether the Police Department has taken adequate steps for mitigating the consequences or not, their conduct on the morning of the 13th which was responsible for spreading a widespread panic among the citizens stands self-condemned. The officers who have been showing excessive zeal for avoiding panic even at the cost of suppressing truth have themselves now been responsible for spreading widespread panic not on the basis of truth but on the basis of a falsehood. The Police Department in the City of Poona headed by Heble must hang its head in shame on what took place on the morning of 13th.

## SECTION 21

## WHAT HAVE THE CITIZENS TO SAY ABOUT THE EVENTS OF THE 12TH AND THE 13TH ?

I propose to be very brief in dealing with the evidence of the citizens, both examined and unexamined, so far as the events of the 12th and 13th are concerned because, as will be clear from the above discussion, I have rested my conclusions mainly on the evidence adduced on behalf of the civil authorities, oral and documentary, and, in particular, the admissions made by the officers.

Dr. Bodhe (Ex. 102) who has his nursing home on the Jangli Maharaj Road says that he had heard no news on the morning of the 12th about the breach of the Panshet dam till some time after 9-00. According to him, he received that message from V. G. Bhagwat, a practising lawyer residing in the Natubag colony. Dr. Bodhe asserts that he met S. B. Kulkarni at the Pulachi Wadi some time after 9-30 and asked him about the extent of the rise of water and Kulkarni told him that the rise would be about the same as during the floods of 1958. According to him, Police Inspector Karande was present during this conversation. Dr. Bodhe says that at about 11-00 a.m. the water rushed in the rooms on the ground floor of his hospital and a little later even entered the first floor. Dr. Bodhe says that he could see some persons struggling in water by the side of his building. According to him, he shouted to these people to come as near as possible towards his building and he with the help of other persons pulled two persons who were struggling with the surging water. After going to the terrace, Dr. Bodhe threw a rope prepared out of chaddars and lifted about seven persons one by one. One of them was seriously injured due to a glass cut. In answer to questions by Advocate Phadke, Dr. Bodhe stated that there were no signs of alarm or panic noticed by him while he was going towards Sassoon Hospital at about 9-30 a.m. He added that on his way from the Sassoon Hospital, he noticed that buses were plying as usual and many people standing at the bus stops. According to him, life was normal till about 11-30 a.m. The only point that was made out against this witness was that he had not filed a written statement in pursuance of the notices issued by this Commission but that he filed his written statement only after a letter was written to him by the Secretary. I will discuss this aspect of the matter after dealing with the evidence of other citizens.

Dr. Y. V. Phatak, Ex. 879, has his bungalow on the Prabhat Road and hospital on the Tilak Road near the Alka Talkies. He had not heard any warning till 10-00 a.m. He went to his hospital at 10-00 a.m. on the Tilak Road. He returned from his hospital at about 10-30 a.m. and passed by the Lakdi bridge. He saw crowds of people crossing the Lakdi bridge. After going home he went back to the river side on foot near the M. E. S. College. He noticed that water was rising in the river. He admits that police were asking the students in the hostel to vacate the premises between 10-30 and 11-00. The only point that was made against this witness was that his statement was prepared by Bakhle and that the witness did not put

his signature over the same. The witness plainly admitted that the statement was correct. I have already referred to this aspect of the argument and it is not necessary to repeat the same. The witness has asserted that till he started evacuating his house after 10-30 a.m. he had received no warning nor any information that the Panshet dam had breached and the water in the river was rising.

Vithal Narayan Dixit, the Proprietor of the International Book Service (Ex- 881) is one of the most important witnesses in this case because he does not fall within the category of what Mr. Murudkar calls 'invitee witness'. The International Book Service, as stated already, is located on the Deccan Gymkhana near the Post Office. He, (Dixit) asserted that information about the breach of the Panshet dam was not relayed by any recognised or accepted means of transmission, namely, beating of drums, or wireless or by individual information. He went to the shop at about 9-00 a.m. on the 12th. Till 11-00 or 11-30 a.m. when water actually entered his shop he had heard no warning nor any announcement about the breach of the Panshet dam. He has asserted that the tax officers of the Corporation were carrying on their routine work of collecting taxes from the cycle owners on the morning of the 12th till 11-00 a.m. and this work was being done by them in front of his shop. The Central Bank and the Post Office which were just by the side of his shop were also carrying on their business as usual till about 11-00 a.m. According to him water began to rush in his premises suddenly at about 11-00 or 11-30 a.m. As he was trying to get out of the shop by the front door he was told that water was rushing from the front side. It was suggested to him that the front door should be closed. Dixit says that one seeing that water was rushing from the front door, some of his customers entered his shop with their bicycles. In spite of the fact that the front door was closed, water entered his shop and the inmates were trapped. Dixit and the other inmates climbed up the mazanine floor and after getting on the floor broken open the glass pan of the window and with great difficulty thrust their bodies one after the other, through the bars of the window and in that way descended on the weather shed. By this time water entered even the floor of the weather shed. Some people from the Central Bank had gone to the terrace. But they could not see Dixit and his companions as they were standing on the weather shed. Some people were standing on the terrace of a building in front of the International Book Service. They shouted to the people standing on the terrace of the building. Thereafter the people standing on the terrace lifted Dixit and others by giving them helping hands. In answer to questions by Murudkar, Dixit has stated :

"It is only after we got out of the shop and descended on the platform that I could realise that the Panshet dam had breached. I assert that no policeman came by the side of my shop either for giving information or for giving any kind of help."

Dixit is a highly respectable witness. He stated that on the 29th July 1961, Pandit Jawaharlal Nehru, the Prime Minister of India, whom he happened to know since before, stopped the jeep, on Dixit saluting him, and then

entered his shop along with the Chief Minister, the Governor and the Divisional Commissioner. When Panditji asked him how he succeeded in making his escape good, he narrated the whole story to him. Panditji then said :

“Mr. Dixit don't be disheartened, we will see what could be done.”

In answer to questions by Mr. Phadke, Dixit stated that the bus traffic was going on in a normal way till 11-00 a.m. on the 12th. He asserted that had any warnings been given, about the breach of the Panshet dam either from loudspeaker vans or on foot the inmates of the Post Office as also the inmates of the shop would not have failed to hear the same. He added that the Bank people also would have heard it. He asserted that there was no policeman in front of the shop or on the Deccan Gymkhana road while they were standing on the platform and while they were standing on the terrace till 9-00 p.m. The evidence of Dixit completely contradicts the evidence given by some police constables, to which a reference has already been made, saying that they rescued Dixit and his companions from the shop.

Miss Sindhu Dinkar Sawarkar gave her evidence at Ex. 885. She is the Superintendent of Ahilya Devi Girls' School, since 1947. She stated that she went to the school at 10-15 a.m. on the morning of the 12th. The school opened as usual at 11-15 a.m. 60 pupils of the VII standard attended the special class held by her at 10-15. She asserted that while the special class was going on one of the teachers entered the room at about 11-00 a.m. and announced the breach of the Panshet dam. By that time as many as 1,100 students had attended the school. They were all girl-students whose ages varied from 8 to 16 years. By 11-45 water reached the rear portion of the building. Sawarkar asserted that she had received no warning from any authority at any time about the impending danger. She added that she did not learn that there was any danger to the dam till 11-00 a.m. Even at 11-40 when she got a call from the Collector's office to say that the school should be closed, all that she was told was that bad floods were likely to visit and therefore the children should be asked to go home. She was not told even then that the Panshet dam had breached. Miss Sawarkar pointed out that even if she had received a warning say at about 8-00 a.m. she would have succeeded in removing the articles like books, furniture, etc., to the first floor and thus saved them. She estimated the loss suffered by the school at Rs. 45,000. In answer to question of Shri Murudkar she pointed out that there is a Care Taker living on the premises of the school and he stays in the premises even during night time. Had any warning been given in the localities where the school building is situated the Care Taker would certainly have informed her about it. There are 2 other schools belonging to the Deccan Education Society. The New English School is situated in the Raman Bag area and the Navin Marathi Shala is situated half a furlong away from the Ahilya Devi School. The Superintendents of these schools live on the school premises. According to her if the Superintendents of these schools had got the news about the breach of the Panshet dam she would certainly have learnt



it from them. She explained as to why she did not file a statement before the Bavdekar Commission by saying that she submitted two statements one to the management and one to the Director of Education and she was assured by the management that all the statements relating to all the institutions would be sent together to the Commission. There is no reason why the evidence of this respectable lady should not be accepted as true. The statement of her colleague in the similar institution, Navin Marathi Shala, (Ex. 937) fully corroborates her on all points.

The next witness before the Commission is Dr. Madhumalti Gune, Ex. 887. She has a Maternity Home situate on the Jangli Maharaj Road. There are about 25 beds in this Home, and the Home has been running for the last 25 years. I have already dealt with her evidence so far as the warnings on the 11th are concerned. As regards the happenings on the 12th, Dr. Gune says that she heard no warnings about the breach of the Panshet dam on that morning till 10-15 a.m. At about 8-00 a.m., she performed a caesarian operation in the Operation Theatre on the first floor. The operation went on till 9-00 a.m. At about 10-00 she came to the ground floor for carrying on the work of the outdoor patients. 7 or 8 patients were waiting at the outdoor. The brother of the woman, who had delivered that morning, came to her at 10-15 at the outdoor room and told her that the Panshet dam had breached and asked her as to how it was that she was still working. She asked him about his estimate about the extent of water. The informant suggested that the ground floor would be submerged in water. Dr. Gune, therefore, started removing the patients from the ground floor to the first floor. Before however the work of removing the patients could be completed the ground floor was flooded with water. Dr. Gune, therefore, had to consider the question as to whether the patients that were removed to the first floor as also the patients who were already on the first floor should be shifted to the second floor. Patients were on coming to her hospital till 11-30 as usual. Dr. Gune did not notice any extraordinary activity on the Jangli Maharaj Road nor any excitement or noise on the road. The water in her building rose to a height of 30 ft. submerging the ground floor and the first floor and 5 out of 9 steps leading the second floor. As she went to the gallery and looked around, she could only see a mass of water all around her. She asserts that no attempt was made by anyone for rescuing the people in the localities round about her building. No buses were plying nor any boats ferrying. She suffered a loss of about 40,000. In answer to questions of Mr. Murudkar, she explained that she was not taken by surprise when the person concerned told her that ground floor of her building would be submerged in water because the person had also told her that the Panshet dam had breached. She explained that during the floods of 1958 water had entered her building and reached the first step leading to the ground floor. She could, therefore, easily conclude that the ground floor of her building would be under water. She denied having made any application to the Government for compensation. She also denied having filed any suit in this connection. No satisfactory reason has been shown as to why Dr. Gune's evidence should not be accepted as true.

We will now consider the evidence of G. S. Pathak, a pleader, residing in the house of his daughter which is situate to the east of the Lloyds bridge. (Ex. 889). I have already dealt with his evidence so far as the warning part of it on the 11th is concerned. Pathak says that he heard no warning between 6-00 a.m. to 11-00 a.m. to the effect that the Panshet dam had breached. According to him he was sitting in his office till 11-00 a.m. Clients started visiting his office from 8-00 a.m. to 11-00 a.m. None of them disclosed to him that the Panshet dam had breached. At about 11-30 a.m. as he was going to the Court he noticed water rushing from the side of the stage of the open theatre in front of the Congress House. He, therefore, returned home. By the time he reached his house he saw water entering inside. Even at that time no warnings were given by anyone. According to him nobody seemed to know anything of what had happened and there was general panic and people were moving helter-skelter. He asserts that he saw not a single policeman nor any other officer between Nava Pul and the side of his house. When the water rose to a height of about 3 feet in his house he decided to quit the house. He and the inmates of the house then waded through waist-high water with only clothes on their persons and went out. He could not take a single article with him. He says that as he and the other inmates went out some young boys in the neighbourhood came to their succour. These boys also had gone to the houses of the neighbours to help the people. According to Pathak, Pleader, there was no official assistance nor could he sight any trucks and vehicles nearabout. He admitted having submitted his statement about the losses suffered by him to the Collector because he was told that such statements were called for. He denied having filed any suit. He pointed out that through the good offices of Mr. Wagle, the then District Judge, he was given shelter in the convalescent home near Sangam bridge for a month and a half. In answer to question by Mr. Murudkar he stated that the estimate of the loss suffered by him was about Rs. 10,000. In answer to questions by Mr. Phadke, the witness stated that till 11-00 a.m. traffic on the bridge was normal and everything was moving in a normal way in the neighbourhood. He heard no noise nor saw any activity for evacuation of the neighbours. He had not submitted a written statement in answer to the notices issued by the Commission and he was asked to explain why he did not do so by the Commission. His reply was :

"I was mentally upset. I was also in extremely adverse circumstances. I had no place to live in, I was at a loss to know of the fate. My Statement had been delayed because of this."

Is there any reason why this senior practitioner should come to perjure falsely before the Commission ?

The next witness to be considered is Mr. N. Bhat, the former Principal of the M. E. S. College, Ex. 892. I have discussed his evidence so far as it related to the warning on the night of the 11th is concerned. Bhat stays in a house at the junction of Prabhat Road and Karve Road. The M. E. S. College is at a distance of about one furlong from his residence. He was in his house till 9-00 a.m. on the 12th. He asserted that he had heard no announcement that the Panshet dam had breached till 9-00 a.m. After

9-00 a.m. he started going to the College. The College hostel is situated in the same premises as the College but lies almost on the edge of the river. By the time he reached the hostel (9-15 a.m.) some policemen had arrived near the hostel. They were asking the students to go out. Principal Bhat explained that the policemen did not tell him that the dam had breached and all that the policemen told him was that the water would rise. Because of the experience during the floods of 1958, Principal Bhat got the cellar of the hostel cleared, the grain and articles were removed to the ground floor of the same building which was considered safe. He asked all the boys from all the floors however to quit. He was on the premises till 12-00 noon. The hostel was submerged in water except the top floor. The ground floor of the College was also submerged in water. The physics laboratory which was located on the ground floor could not be saved. 80 per cent. of the books in the library which is also situated on the ground floor were taken out and kept on the first floor with the help of a few boys staying nearabout. Principal Bhat adds that the house where he was staying was submerged in water. Therefore, he had to go to a friend for residence. In answer to questions by Mr. Murudkar, Principal Bhat asserted that the Police had not brought any vehicles and all that they did was that they drove the boys out of the gates. In answer to further questions he stated that he came to know that the Panshet dam had breached only after 12-00 noon when people started talking about it. He denied that Kekre told him that the dam had breached and, therefore, it was necessary that the hostel and college premises were vacated. He asserted that if any warnings had been given either on the night of the 11th or on the morning of the 12th, he would certainly have heard about that. He further stated that he had no information on the morning of the 12th that any arrangements were made by the authorities for evacuation, or warnings etc. According to Principal Bhat, no articles in his house could be saved because both the ground floor and the first floor were submerged in water. He asserted that as he was going from his house to the hostel he did not notice anyone going with belongings except a maidservant who was staying just on the edge of the river. Principal Bhat has given evidence in a very straightforward and clear way and his evidence inspires confidence in me.

The evidence of J. S. Tilak (Ex. 894) is very important. He is one of the trustees of Kesri-Maratha Trust and the Chief Editor of Kesri. He is the President of the Citizens' Committee and he has submitted two statements, one in his individual capacity and the other as the President of the Citizens' Committee. In his statement Ex. 895, submitted jointly with the others, several technical matters have been discussed, but Tilak plainly stated that he did not wish to give any evidence on those matters and that that part of his statement need not therefore be taken into account. Tilak stays in a building known as Gaikwad Wada in Narayan Peth. Kesri office is located in the same building. Tilak went to his office at 9-00 a.m. according to his usual practice. Till then, he had received no news about the breach of the Panshet dam. No announcement according to him was made saying that the dam had breached. At 9-30, he called the editorial conference. At about 9-30 a.m., he received a phone from his reporter

that he had heard the news that the Panshet dam had breached. Tilak asked him to have the message confirmed by ringing up the Collector or the Divisional Commissioner. The reporter told him that his attempts to contact the officers proved futile. Tilak disclosed the news to the Assistant Editors. Tilak concluded that the flood would be very much bigger than the floods of 1958 because the water contained in the Panshet reservoir was 3 times the volume in the Khadakwasla reservoir. 150 workers attended the office on that morning, 40 of whom had their residences on the banks of the river. He asked these persons to go home to save themselves and members of their families. Tilak's mother is the Secretary of the Anath Hindu Mahilashram and had gone to the Ashram that morning. The Ashram is about one and half furlongs away from the Kesri office. Tilak then started going to the Ashram. At that time, he noticed that the water had come upto the gate and the road was completely blocked. Tilak, therefore turned his car and joined the Laxmi Road and went to the Maternity Hospital of Dr. Chaplabai Khadilkar just at the back of the Anath Hindu Mahilashram. On his way, he noticed no policeman either engaged in giving warning or trying to evacuate people. With great difficulty he could enter the gallery of the primary school in the Anath Hindu Mahilashram and from the gallery he went to the back door and from the back door he entered the Ashram. By that time, all the girls were shifted to the first floor of the Ashram by his mother. 6 or 7 women and girls, however, were trapped on the ground floor because they had gone inside the store for the purpose of keeping grains on higher levels. Tilak went inside and pulled 2 or 3 of these women. 2 or 3 persons who had come to the shelter in the Ashram helped Tilak in pulling out the remaining women. All these trapped women were then taken to the first floor. By this time the entire ground floor was submerged under water. The number of inmates who were in the Ashram at that time was about 117. Tilak says that his mother told him that the inmates had received no warnings and none had asked them to vacate the Ashram. Since the ground floor was submerged and there was sea of water all around, it was impossible to get out of this Ashram. The water was still rising and the first floor also came under water. All the inmates including Tilak, therefore, climbed the roof of the Ashram by putting up tables and chairs. Tilak and the inmates of the Ashram rested on the roof till about 5-00 p.m. Tilak says that he could see the buildings around tumbling down. As the water came on the lower part of the roof, they climbed up to the higher part. Tilak could not anticipate to what height the water would rise. He, therefore, felt that the only way to save their lives was to establish some contact with the Khadilkar's Maternity Home. The inmates from the Khadilkar's Maternity Home threw a cotton rope (Nawar) to the roof of the Mahilashram. A sort of bailey bridge was prepared with the aid of several articles that were coming flowing in the current of water. 35 girls were successfully shifted to the Maternity Home of Khadilkar, by about 4-00 p.m. Thereafter, there was decrease in the water and therefore, the work of the transshipment of the girls and women was stopped. At about 9-00 or 9-30 Tilak and other inmates got down from the roof. All the inmates were then removed to the Shivaji Nagar for the night. Tilak asserted

that he could see no policemen round about upto Shedge Vithoba on the Laxmi Road till 4-00 p.m. when the water was still on its rise. According to Tilak, one Police Inspector was trapped in the Maternity Home of Dr. Khadilkar. He did not know his name. Tilak says that he was in that home till 5-00 or 6-00 p.m. He asked the Police Inspector as to where the policemen were and what they were doing when anti-social elements were picking up articles coming flowing. The Inspector gave him no reply. Tilak saw some policeman round about Ashram between 4-00 to 9-00 p.m.

With regard to the happenings of the 13th, Tilak says that the traffic on the Lakdi bridge was going on till 9-30 and there was no stoppage of it nor any prohibition for anyone to pass and repass the bridge. He admitted that there was a policeman standing at the Tilak end of the bridge. He suggested to him that the traffic over the bridge should be stopped. As Tilak was returning from Lakdi bridge towards his house, he met several persons on the way who complained that many persons were coming and going freely and some of them were resorting to pilfering the articles and there was no effective police protection over them. He then went to Shanwar Peth and was there till 10-00 a.m. He saw no policeman nor any cordon at that place also. There also many people complained to him that the articles rescued by them were being wrested from the hands by anti-social elements and that they were helpless in the matter. Tilak then returned to Gaikwad Wada and on his return he heard a rumour that the Khadakwasla dam also had breached. He saw several persons running away saying that the Khadakwasla dam had breached. He told them that the Khadakwasla dam had breached on the previous day. Some of them asked him to make enquiry with the police because they said that the police themselves were spreading the news. A police wireless van was standing in front of the Gaikwad Wada. Tilak went near the van and told the operator that they should proclaim on the wireless that there was no question of Khadakwasla dam breaching and water coming and there should be no reason for panic. The operator gave him no response. Tilak, therefore, went to the Narayan Peth Chowkey and asked the Dy. S. P., Gharpure, that announcement should be made from the wireless loudspeaker that there was no possibility of any further floods coming. Gharpure told him that no loudspeaker van was available. He however asked 3 policemen who were standing by to go about and inform people. Tilak felt that it was necessary to issue a pamphlet with a view to reassure the people and put an end to the panic and stampede of the people. A small issue of Kesri was published on Friday. Tilak stated that he adheres to the views expressed by him on the floor of the Assembly that the administration had completely collapsed on the 12th and on the 13th of July in the light of the knowledge gained by him subsequently. He complained that no information was given to the news-papers or to the institutions. In answer to questions by Mr. Murudkar he stated that as a Member of the Legislative Assembly he tried to seek information from the Divisional Commissioner on the night of the 11th but he could not contact him. In answer to a further question he stated that it was only after he learnt that the Panshet dam had breached and having known that Khadakwasla dam was weak, he felt that the floods would be much bigger than the floods of 1958. He asserted that he expected the officials to keep in touch

with him as a Member of the Legislative Assembly in view of the fact that ours was a democracy. According to him there was discussion in the Assembly regarding the weakness of the Khadakwasla dam. He was, however, unable to mention the month or year when the discussion took place. He asserted that he did not see any policeman rendering any kind of help in the afternoon and evening of the 12th while he was standing on the roof of the Anath Hindu Mahilashram. According to Tilak, people were getting out of their houses as they noticed that the houses were about to fall. He admitted that individual policemen may have rendered some assistance out of humanitarian considerations. He, however, asserted that there was no well-directed or well-organised plan on the part of the Police for rescuing or evacuating people in any quarters. He admitted that he was a Member of the Samyukta Maharashtra Samiti in September 1961. In answer to challenging questions of Mr. Murudkar, Tilak stated :

“ I have not heard any announcement on the morning of the 12th in the streets of Narayan Peth to the effect that the Panshet dam had breached. I did not hear any announcement while I was in the Ashram, at 4-00 p.m. to the effect that Khadakwasla dam had breached.”

The evidence of Tilak completely disproves the story set up by some policemen, namely, that they rendered help to the inmates of the Anath Hindu Mahilashram for evacuation. His evidence clearly establishes that in an area, which evidently fell within the category of additional low-lying areas, neither on the night of the 11th any warnings were given nor on the morning of the 12th any warnings were given regarding the Panshet dam. It is also evident from his evidence that there was no police help available in the area that came under floods in the afternoon of the 12th. It is ridiculous to suggest that Tilak is exaggerating matters merely because he happens to be a Member of the Samyukta Maharashtra Samiti or the Chairman of the Citizens' Committee. I was very much impressed by the manner in which Tilak gave his evidence and I am inclined to believe him.

S. N. Gadekar, retired, D. S. P., in his evidence at Ex. 902 has tried to support the case of the civil authorities by saying that he heard the announcement at about 8-15 a.m. on the 12th while he was standing in front of the Jangli Maharaj Road by the side of the petrol pump. The announcement was being made from a jeep and according to him the announcement was like this :

“ Panshet dam has breached, people living on the banks of the river should vacate.”

Assuming that such a warning was given, could this be regarded as an adequate warning about the impending danger? The warning is addressed to the people living on the banks of the river and asks them to vacate their houses. Even if the warning mentioned the fact that Panshet dam breached, still in the absence of any statement to the effect that the floods would be bigger than the floods of 1958 or there would be unprecedented floods, people would not understand the gravity of the situation. The importance of the announcement is completely lost when the announcement is addressed to the people living on the banks of the river. I have criticised

Gadekar's evidence on the point that he heard the announcement of a warning on the previous night and I feel that his evidence about the warning on the 12th also does not stand on better footing. The house of Gadekar is situated in the Ghole colony which is about 500 ft. from the Jangli Maharaj Road. After hearing the announcement he went to his house. He and the members of the family stay on the ground floor. He asked the members of his family to keep the articles on the first floor saying that although there was no possibility of water entering his house, it was better that some precaution was taken. After about an hour or so he went to the Brooke Bond office and from there he went to the Camp. He started going back at about 11-00 p.m. or so. He took his meals with his friend and took round on his scooter. In answer to questions by the Commission, he stated that after hearing the news of the breach of the Panshet dam he did not feel that something serious would happen but only felt that the floods would be a little bigger than the floods of 1958. Although he knew several persons from the police department he did not think it necessary to ask anyone as to what was likely to happen as a result of the breach of the Panshet dam. Then comes an important admission:

"I felt no urge that this was a critical time and that many people might suffer on account of the floods and therefore I should be something for the flood affected victims."

In answer to questions of Phadke he went much further that what he had stated earlier in answer to the questions by the Commission's counsel regarding the announcement. He added for the first time that the announcements stated that there would be unprecedented floods. He admitted that although he heard the news about the breach of the Panshet dam he was not sure about the truth of it. He stated that he tried to verify the truth of it and all that he learnt was that *the police were requesting the people residing on the river side to vacate their houses*. What follows is very important:—

"I did not get confirmation about the breach of the Panshet dam till the end of the 12th. I have not seen any evacuation carried out by the police."

He also admitted that he never realised that some social service would be required to be done towards the river side on that morning and that is why he preferred to attend to his personal business than to social work. Gadekar's evidence does not support the case set up on behalf of the civil authorities.

That takes me to the evidence of Rohidas Kirad, Mayor of the Municipal Corporation, Poona, at the relevant time. He says that he learnt at about 8 a.m. from the Municipal Commissioner about the breach of the Panshet dam and, thereafter, he went to the Corporation. He met the Collector and the Municipal Commissioner at the Corporation and asked them as to what steps they had taken. The Municipal Commissioner told him that he had despatched all the available municipal vehicles and staff to the flood-affected localities. The Collector told him that he had despatched about 100 or 150 policemen, who were in the Corporation Building to the flood-affected locality. Thereafter, Kirad took rounds along with City Engineer.

Yadav. He went to the Mang Colony, then to the Pulachiwadi and then to the Deccan Gymkhana. He says that he personally gave information to the people whom he met about the breach of the Panshet dam. He admitted that he did not go to Punam Restaurant nor to the Maternity Home of Dr. Gune nor to the hospital of Dr. Bodhe to convey any information to them, because he felt that these persons must have already been given information about the breach of the Panshet dam. Then he made a very important admission :

“From the Corporation Building up to the place where Kale resides near the Jangli Maharaj Road, I met no policemen. I met two policemen near Kale’s building. Thereafter, I noticed four policemen at the Deccan Gymkhana bus stop.....The only activity that I could see during these rounds was the activity going on in the Pulachiwadi area and such other lowlying areas. The activity consisted in people carrying their belongings on their heads, shoulders, etc. (from Pulachiwadi).”

He then went to Narayan Peth. He saw a car parked in front of the Anath Hindu Mahilashram at about 9-30 a.m. One hundred to one hundred twenty-five persons had collected on the road in front of the Anath Hindu Mahilashram. Two policemen were standing there. Kirad told the people collected there that the Panshet dam had breached. He says that Yadav, City Engineer, went inside the Anath Hindu Mahilashram and came out after some time but he cannot say whether he gave any warning to anyone there. Yadav has been examined in this case and he has not stated that he went inside the Mahilashram and conveyed any warnings to the inmates. Kirad then went to Sitaphalbag and from there to Shanwar Peth and Kasba Peth. In the course of this entire itinerary, he conveyed warnings personally. He adds that he saw police vans giving warnings in two places, namely, in front of the Anath Hindu Mahilashram and the other in Kasba Peth. In regard to the work done by the municipal staff, Kirad says :

“I was told by the Municipal Commissioner that members of the municipal staff had been asked to give warnings and arrange evacuation. But through the whole of my round, I did not come across a single member of the municipal staff doing any such work at any place..... I did feel that municipality was not properly organised for meeting the situation, such as giving warnings and making arrangements for evacuation. I told the Commissioner that he should send more trucks for helping in the evacuation and also more men for the same task..... I pointed out to the Commissioner that while I was in Kasba Peth, people demanded more trucks.”

He then narrates what he saw in the course of the second round started at 11 a.m. in the company of the Municipal Commissioner, the Collector and the District Superintendent of Police. The most important part of Kirad’s admission comes here :

“On our way, we noticed no trucks evacuating people. In the course of my second round, the impression I formed was that although arrangements were generally good, there was deficiency in the number of trucks. I did feel that things could have been organised in a better way.”



He stated that they went to the Corporation via Lakdi Bridge and at that time, water had come on the road on the Lakdi Bridge. He admitted that there were crowds on both ends of the Lakdi Bridge. He also admitted that he made no enquiry as to what was taking place in the Anath Hindu Mahilashram, when the car passed by that side. He further admitted that there were large crowds seen on the roads in the course of the second round. In answer to questions by Mr. Phadke, Kirad admitted :

“ I heard complaints from people saying that proper warnings were not given to the people nor proper arrangements made for evacuation. I did not question the Municipal Commissioner as to how arrangements were not made and as to why people should go about complaining. I did not try to satisfy myself, even later on, whether any of the trucks were really utilised for evacuation. I was not told either by the Collector or by the Municipal Commissioner, when I met them first in the Corporation Building, that they had organised a plan and devised measures of warnings and evacuation. Even Yadav did not disclose the plan of action while he was moving with me. Neither Yadav nor any of the municipal officials took me to schools to show where and how people were to be housed after evacuation. He did not tell me how many schools were kept in reserve and what was the accommodation. I relied upon what was stated to me by the Municipal Commissioner and Yadav, namely, that trucks and men were sent for evacuation. I did not question the Commissioner as to how complaints were raised about proper arrangements not having been made nor did I ask him to submit to me a full statement about the arrangements made. During the first round, I could notice that business transactions were going on as per normal practice to some extent. Buses were coming and going from the bus stand on the Deccan Gymkhana bus stop, when I went to that side on the first round. I did not ask the Stand Superintendent as to how it was that they were allowing buses to ply when the dam had breached and large floods were expected.”

In answer to questions by Mr. Murudkar, Kirad stated that even on the 12th, he did not learn that the Divisional Commissioner had held a meeting in which questions regarding the warnings and measures for meeting the floods were considered. To further questions by Mr. Murudkar, the witness stated :

“ I did not ask either the Collector or the Commissioner on the 12th as to what arrangements were made by them on the previous night to meet the flood situation. I cannot say why I did not ask the officers as to whether they had made proper arrangements. On seeing the extent of the floods, I felt that it was necessary for the authorities to make arrangements for the trucks on a more extensive scale. At about 10-30 a.m., I saw about two to three trucks in Narayan Peth. I cannot say whether these trucks belong to the Police or to the Municipality or to the private individual. I did not ask the Collector, the Municipal Commissioner or the District Superintendent of Police as to whether they had taken rounds in the morning of the 12th.”

Kirad has tried to suggest that in the course of his first round in the company of City Engineer, Yadav, he stopped the car at different places.

to convey warnings to the people collected that the Panshet dam had breached. It is difficult to accept this part of his evidence. He has admitted, as will be shown presently, that he was not undertaking the round for the purpose of giving warnings, but for the purpose of supervising evacuation operations. That is why he had not taken any peon with him. He admitted that he should have taken some persons from the staff and also a loudspeaker for facilitating the announcement of warnings. He has virtually admitted that he knew that warnings were given previously. Then, where was the need for the Mayor to repeat the warnings? To that question, Kirad has given an ingenious reply :

“ It was necessary to din that fact into their ears.”

If that is so, why did he not take an announcer and a loudspeaker? To that, his reply is that it was not his original intention to give warnings at all. Then why this sudden brain-wave? Either prior warnings were given or they were not given. If given, the second warning was superfluous. If not given, it was ineffective and clumsy. The matter does not rest there. B. N. Rajhans, one of the citizens, in his written statement submitted on 6th October 1961 stated (Ex. 965) :

“ This belief (floods would be of the same order as previous years) was strengthened by the visit of the Mayor and City Engineer on the 12th morning. These officers visited our colony at 9 a.m. They told us to vacate the houses. I asked them whether the dam had failed. They did not tell us anything in that behalf. I further asked them, how high the water will rise. The reply was, about six to eight feet.”

Yadav has admitted that he and Kirad met Rajhans that morning. Kirad's case about his having himself given warnings to people in various localities in the course of the round undertaken for the purpose of supervising evacuation operations is unnatural. It receives a severe jolt from the disclosure made by Rajhans. Further, doubt is cast on Kirad's veracity by two circumstances : (1) Kirad says that after his second round in the company of the officers, he went back to the Corporation Building and thereafter he shifted himself to the Police Headquarters with the officers. B. L. Shelar, Pleader, himself a fellow corporator, belies him on this point. In his statement (Ex. 1079), Shelar says :

“ At 1-20, I saw the Mayor's car at the corner of the station. I stopped him and went with him to Yeravada.....At 1-25 we went to Holkar bridge. We could not cross the bridge as water was overflowing the bridge. The car of Namdevrao Mate was going behind our car. The Mayor asked him how much water had risen in the town..... Thereafter, we went to Police Headquarters at 2-15 p.m.”

(2) Whereas Heble says that he was in his mufti at the time of the second round in the Mayor's car, Kirad says that Heble was in his uniform. Kirad evidently wants to be more royal than the king.

Then a question may be asked as to why Kirad made admissions inconvenient to the case of the civil authorities. The answer may be, the arrangement about trucks etc. was so palpably unsatisfactory that, he had

not the courage to support the unsupportable. I have already stated that the manner of conveying information adopted by Kirad was artificial and ineffective. In answer to questions by the Commission, Kirad stated :

"I had not taken any peons with me when I started going on the first round with Yadav. I started my round not with a view to give warnings to the people about the breach of the dam but with a view to supervise the operations and with a view to see the condition of the floods. Whatever warnings I gave, I gave after getting down from the car. I used to stop my car at places where there were crowds of people standing. Warnings were given by me as well as by Yadav. I was not calling people aloud. I was making gestures and also calling people to whom I knew and then I started giving them warnings. I did not ask these people as to whether they had heard about the breach of the dam. It is not as if I proceeded on the footing that people did not know that the Panshet dam had breached and therefore it was necessary to apprise them about it.

I can repeat the words which I uttered :

'The Panshet dam has broken, there is danger of high floods, people should be cautious.'

..... I feel that I should have taken some more persons from the staff of the Corporation and also a loudspeaker for facilitating the announcement of the warnings. This thing did not strike me at that time."

In these circumstances, the warnings given by Kirad, if any, were not of much help to the people as the reach of these warnings was very much limited. Kirad has stated point-blank that very few vehicles were used for the evacuation purpose and that it was necessary that more vehicles should have been brought into operation for meeting the situation. Kirad has taken rounds in all the flood-affected areas and yet he tells us that he saw evacuation operations being conducted in Pulachiwadi and some other low-lying areas. He has finally admitted that there was no proper organisation for meeting the flood situation and he wished many more things had been done in that respect.

Here, it is necessary to remember that Kirad is one of those witnesses who falls in the category of 'invitee witnesses' (according to the phraseology used by the Advocate on behalf of the civil authorities). He had not submitted his written statement before the Bavdekar Commission nor before this Commission till a letter of request was sent to him by the Secretary of the Commission. If this is the case with respect to a man of the status of the Mayor of the Corporation, then can anyone blame the other citizens for remaining indifferent in the matter and not submitting any statement before the Commission in answer to the notices. This is sufficient to expose the hollowness of the criticism that some witnesses are invitee witnesses.

The evidence of B. L. Shirole, ex-Mayor is not of much avail, because so far as the events of the 12th are concerned, he knew nothing, as he was not in Poona on the morning and afternoon of the 12th July.

I will then come to the evidence of Nilkanth Waman Limaye, Proprietor of Poonam Restaurant. Limaye went to the hotel at about 8 a.m. At that time, his servants told him that some policeman had gone to the hotel and informed them that there was a possibility of floods in the river and, therefore, they cautioned them that they should be on their guard. A little later he heard some 'gadbad' in the lane leading to Pulachiwadi. He went to that side and saw some women coming from the Pulachiwadi side. They told Limaye that the police were asking them to vacate. There was no policeman, however, at that time. He allowed the women to keep their belonging in a building where Poonam Restaurant was originally located. According to Limaye, at about 9-30 a.m. or so, about 100 persons had collected at the Pulachiwadi side to see the floods and there were two policemen at that spot for bandobast. Before he had learnt from Gokhle, Regional Publicity Officer, that the Panshet dam had breached at about 10 or 10-15 a.m., he saw the water rising rapidly. He then started removing his articles from the godown to the terrace and then went to the Pulachiwadi. He asserts that till 11 a.m. he heard no warnings from the police or from any other source that the Panshet dam had breached or that there was likelihood of unprecedented rise of water in the river. Within a short time, the entire ground floor including the mazanine floor was submerged in water and water rose to four feet even on the first floor. He shifted the lodgers staying on the first floor to the second floor. Till 10 a.m. customers were visiting the restaurant for taking tea as usual. Some pressmen had come to the Poonam Restaurant for taking tea in the morning. None of them told Limaye that the police had given warnings in the morning that the Panshet dam had breached. In the afternoon, the water rose to a height of about 22 feet in the building. He then described the area of the town that came under water. Limaye asserted that it was only on the 13th that he learnt that the Khadakwasla dam had breached on the previous day. He also asserted that he did not see any policemen or army men or Home Guard kept anywhere in the flood affected localities. He then made a very important complaint :

"By about the end of July 1961, some people came to me and complained that police were bringing pressure on them for making the statements to the effect that warnings were given by the police and that they had heard these warnings. I was the Secretary of the Zonal Relief Committee of which Dr. D. R. Gadgil was the Chairman. Several big and petty merchants used to come to me in my capacity as the Secretary of the Committee. The complaints referred to above were, in particular, voiced by petty traders, such as, proprietors of the cycle shops, grocery, hotels and pan merchants. Our office was opened in Punam hotel itself. I told these petty traders and merchants that they should send the policemen, or the authorities, who were trying to bring pressure on them for making statements, to my office and then I would deal with them. This complaint was not repeated to me at any time later."

It is noteworthy that this part of Limaye's evidence remains unshaken in cross-examination. In answer to questions by Mr. Murudkar, he admitted that he took active part in organising relief to the flood victims. He was then asked the question as to why he did not submit the statement in

pursuance of the notices issued by the Bavdekar Commission and this Commission :

"Q. Can you explain as to why you, who were the prominent social worker, did not think it fit to submit a statement to the Commission in pursuance of the public notices ?

A. At that time, I was thinking of contesting elections to the Assembly. I felt that if I make a statement to the Commission, that may affect my election one way or the other. That is one reason why I did not submit any statement. The other reason was that, Government appoints fact finding Commission on matters of public importance but finally does not endorse or accept these findings. I, therefore, felt that I would be wasting my time in submitting the statements before the Commission. When I said that my statement might affect the elections. I mean to convey that a propaganda may be made against me saying that I was sponsoring the cause of the people because, I wanted to get elected."

In answer to further questions, Limaye asserted that on the 13th, when people were engaged in a frantic search of their belongings there were no policemen seen on the side of his restaurant. He admitted that he suffered a loss of Rs. 50,000 on account of the floods in addition to the intangible damage due to loss of business for a long time after the flood. In answer to questions by Mr. Phadke, Limaye stated that there are sixty to seventy servants working in his hotel till 11 a.m. and six or seven servants continue to work from 11 a.m. to 12 noon. None of these nor anyone amongst the lodgers told him, on the morning of the 12th, that during the night time, the police had made an announcement that there was danger to the Panshet dam and that unprecedented floods were likely to visit the city. With regard to what was happening on the Jangli Maharaj Road on the morning of the 12th, the following answers were elicited, in his cross-examination by Mr. Phadke :—

"There are quite a number of shops on the Jangli Maharaj Road near the Punam. Business was going on in a normal way in all those shops and also in the Maharashtra Bank. In the shop of L. D. Bhave, however, attempt was made to remove articles because that shop had suffered during the floods of 1958. The traffic of buses, trucks, cars, etc., was going on by the road as usual. The Jangli Maharaj Road and particularly the area in front and near my hotel is a crowded locality. People come and go in large crowds by this road. All this was going on as usual till 11 a.m. Customers came to my shop till 10-45 a.m. as daily routine. None of these customers told me that he had heard from the police that the Panshet dam had breached. On the night of the 12th, I went to my house via Nava Pool. This was sometime after 11 p.m. The traffic on the Nava Pool was going on. There were no policemen picketed on this bridge prohibiting the traffic. I went to my house via the Nava Pool, Phutka Buruj, Appa Balwant Chowk and Seva Sadan. Water had entered in all the houses in the area between Phutka Buruj to Appasaheb

Patwardhan's house and Appa Balwant Chowk and through the whole of this road, I saw no policeman whatsoever. Therefore, there is no question of any bandobast by the police."

With regard to the work of evacuation in Pulachiwadi, Limaye stated :

" I saw no police truck on the side of Pulachiwadi engaged in carrying the belongings of the people. I did not notice any policeman keeping any articles in any of the trucks. I mean to say that I saw only one truck on the side of the Pulachiwadi. This was a private truck. No red cross vans or first-aid vans had come near our locality for giving relief to the people. The people that evacuated from Pulachiwadi went to places of their own choice for shelter. Nobody showed them any assigned places for shelter. No arrangements were made nearabout the Jangli Maharaj Locality for housing refugees."

Limaye has given an explanation as to why he did not think it fit to submit a written statement to the Commission in answer to the public notices. It is possible that this answer may not satisfy all. But what we have to consider is whether there were inhibiting factors operating on the mind of Limaye. He has mentioned them and they are plausible enough. Limaye's evidence also shows that proper warnings were not given about the breach of the Panshet dam nor any arrangements made for carrying on the evacuation of the people in the flood-affected areas.

The last witness examined on this point is N. B. Parulekar. But, his evidence is not of much importance as to what took place on the 12th. I will, therefore, deal with his evidence in a few words. I have already dealt with the part of his evidence at length so far as the events on the 11th are concerned. With regard to the events of the 12th, Parulekar, in answer to questions by Mr. Phadke, says :

" On the 12th, I went to the Sakal office at about 8 or 8-15 a.m. During night time, some correspondents and members of the editorial staff remain in Sakal office. None of my staff told me that he had heard on the previous night any warnings having been issued by the police regarding the danger to the Panshet dam. The attendance of the staff in my office was as usual. Fifteen members of the staff came from the lowlying areas near the banks of the river. They also attended the office on the morning of the 12th. I passed by the Council Hall *via* Rasta Peth to my office. On my way, there are two police chowkies, one near the Council Hall and the other near the Daruwala bridge. Water entered my office at about 2 or 2-30. From 8 or 8-15 a.m. when I went to the office till the water entered my building, no warnings were announced by the police or any authorities. At about 7-30 or so, our Sub-Editor, Mr. Deshmukh informed me on phone that Panshet dam had breached. When I heard about the breach of the Panshet dam I *did* have feeling that the Khadakwasla dam would also breach and that the bridges in the city of Poona will give way."

This evidence corroborates the evidence given by other citizens that warnings were not given about the breach of the Panshet dam on the morning of the 12th.

*Citizens whose statements have been brought on Record.*

Having dealt with the evidence given by the citizens, who were examined before the Commission, I will take a bird's eye view of the evidence in the form of statements of such of those witnesses whose statements have been taken on record. I will set out in a nutshell the effect of these statements.

*Kasba Peth.*—Statements of forty citizens in the Kasba Peth locality have been brought on record. Out of them thirteen do not speak of having heard any warnings. One of these is a pleader of twenty years standing and the remaining are men in service etc. Sixteen of these citizens speak about having heard warning regarding the breach of the Panshet dam; but the time mentioned by them of their having heard the warnings varies from 7-30 a.m. to 12 noon. One of them is a Government seryant, who says that he learnt about the breach, when water actually came in that locality, i.e. at about 12 noon. It is not possible to find out the status of most of these citizens from their statements. One of them has made a curious statement saying that he was told that the breach took place on the 11th night. Seven citizens speak about the breach of the Khadakwasla dam as having taken place between 7-30 and 12 noon, when actually the dam breached at about 2 p.m. It is obvious that no reliance could be placed on the statements of these citizens. Three citizens say that they heard the warning about the anticipated rise of water and one says that the warning was addressed to people living on river banks and they were called upon to vacate their houses.

*Narayan Peth including Sitaphalbag.*—Statements of twenty-five citizens from this area have been brought on record. Eleven of them do not speak of having heard any warning. This number includes one professor, two social workers and one doctor. Five out of the twenty-five citizens say, they heard warnings regarding the breach of the Panshet dam. This number includes one social worker. The rest are traders or factory owners. Two say that the breach of the Khadakwasla dam was announced in the morning. This cannot be true. Four say that the warning was announced on the river side or it was stated that the danger was to the areas on the river banks. They include a factory owner. Out of the remaining three, one speaks of police having asked the citizens to vacate, another says that the police stated that they did not know the extent of the floods and the third says that he learnt about the breach in another shop.

*Shanwar Peth.*—The statements of twenty-one persons have been brought on record from this locality. Twelve among them say that they did not hear any warnings regarding the breach of the Panshet dam. One of them is a Superintendent of a School, one is a journalist and one is a Government servant. Three citizens speak having heard a warning about the breach of the dam. One among these three is a trader. Three citizens speak of having heard a warning that there would be a rise in water. One of them is a social worker and the rest are shopkeepers. The remaining three speak of warnings mentioning the danger to people living on the river banks. One of them is K. P. Vora (Ex. 927). He says that at 9, he heard a warning to the effect that the dam had breached and people residing on the river side should go to higher levels. S. R. Mohankar (Ex. 1133) says that the police van was moving on the banks of the river announcing

that there was danger to the dam and asking people on the banks of the river to evacuate. The remaining one says that warnings were given at about 10 a.m.

*Jangli Maharaj Road, Deccan Gymkhana, Apte Road and Ghole Road.*—Statements of thirty-four citizens in these localities have been brought on record. Eleven of them did not hear any warnings having been announced. One of them is a professor, two are high officials of Banks, one is a post-master, one is a Librarian of Bhandarkar Research Institute. Twelve citizens say that they heard warnings about the breach. Two of these come from Pulachiwadi. There is wide variance about the time when the warnings were given. For instance, Joshi (Ex. 1167) Manager of the Hind Vijaya Talkies, states that he heard that the dam had breached on the night of the 11th. One says that he heard a warning to the effect that there would be rise in water. Two citizens speak of having heard warnings regarding the breach of the Khadakwasla dam on the morning. Three citizens say that the warning stated that danger was only to the persons on the banks of the river. One citizen says that he heard the announcement that the dam was in danger. He is a social worker. Two speak of having heard the announcement from policemen about the breach of the dam. One does not, however, get a clear idea about the time of these announcements.

*Karve Road, Prabhat Road and Erandayana.*—The statements of six citizens in this locality have been brought on record. One of them says that he did not hear any warnings on the morning of the 12th. He is a retired Inspector of Prisons, Bombay. Two speak of having heard the announcement regarding the breach of the dam; one of them is a taxi driver and the other, a hotel owner. One citizen merely speaks of the assistance rendered by the police and one says that the warning was that people should watch the water level.

*Mangalwar and Gadital.*—Statements of nineteen citizens in this locality have been brought on record. Eight say that they did not hear any warning having been announced on that morning. Two of them are doctors and one is a Government servant. Seven citizens speak of having heard the announcement regarding the breach of the Panshet dam. Five out of them, however, hail from Gadital locality. One, who speaks about the warning regarding the breach of the dam, adds that the danger lay to persons on the banks of the river. Three citizens speak of having heard the warning about the rise of water or about oncoming of floods.

*Somwar Peth.*—Statements of fourteen citizens from this area have been brought on record. Nine of them say that they did not hear any warnings about the breach of the Panshet dam on that morning. Three speak of having heard the warning about the breach of the dam, one says that the warning related only to the rise of the water level.

*Budhwar Peth.*—Statements of three persons from this locality have been brought on record. One says that he heard no warning about the breach of the Panshet dam. He is a pleader. One, who is a Corporator, says that he heard a warning about the breach of the Panshet dam. The third one says that the warning was that there will be rise in water.



*Sambhaji Chowkey, Laxmi Road and Alka Talkies.*—Statements of eleven citizens in these localities have been brought on record. Five citizens who are all men of status say that they did not hear any warning about the breach of the Panshet dam on that morning. Four say that they heard warning about the breach of the Panshet dam. *One says that the warning was not proper, and one is silent about the warning.*

*Shivajinagar, Bhamburda area opposite Corporation Building.*—Statements of fourteen citizens from this area have been brought on record. Five citizens say that they did not hear any warning having been announced regarding the breach of the dam. One of them is an Advocate and one is a Government servant. Seven citizens speak of having heard a warning about the breach of the dam. One says that the warning stated that there was danger to people on river banks and one speaks of having heard a warning stating that there was danger to the Panshet dam. There is an extraordinary statement made by S. R. Telang (Ex. 1053). He says that the wireless van announced that there was danger to the dam at about 8 a.m. on the 12th.

*Ashanagar.*—Statements of seven citizens from this locality have been brought on record. One of them who is a Government servant says that he did not hear any warning announcing the breach of the Panshet dam. Five citizens speak of having heard a warning regarding the breach of the Panshet dam and one says about the breach of the Khadakwasla dam also.

I have carefully gone through the statements of such of those citizens who have neither been examined nor whose statements have been brought on record. The advocate on behalf of the civil authorities was all along insisting that all the citizens, who have put in their written statements (about 1,300 in number) should be examined. Alternatively, it was suggested that at least their statements should be brought on record. It is necessary to remember that about one thousand citizens who have put in their statements have asserted that no warnings of any kind were given either on the 11th or the 12th. Out of the remaining, about 250 citizens, who have put in statements, speak of some kind of warnings having been given. Some of these statements have been brought on record and the present analysis deals with the statements that have not been brought on record. Some of these citizens reside in the traditional lowlying areas and some in areas adjoining the lowlying areas. The picture emerging from the statements of this group of citizens is extremely hazy. Some of them do say that warning about the breach of the dam was announced. But the tenor of these statements suggests that these warnings were extended as water went on rising. No clear picture about the time when these warnings were given can possibly emerge from these statements. Nor do these statements support the theory put forward by Heble that, on the 12th, warning were given thrice, first time at about 8 a.m., second time at about 10 or 10-30 a.m. and third time at about 3 p.m. I have already pointed out that the statements of these citizens, so far as warnings on the night of the 11th are concerned, are conflicting. Their statements about the warnings on the 12th do not stand on a better footing. In any case,

they do not support the theory put forward on behalf of the civil authorities. If the matter is to be decided by numbers, evidently, the preponderance is in favour of the view that no warnings were at all given either on the 11th or on the 12th.

On a review of the evidence of the citizens it is clear that there was no centralised direction and the members of the subordinate staff were acting on their own and according to their understanding of the situation. Some policemen were announcing that the Panshet dam had breached, others were merely speaking about the rise of water etc. The number of the citizens who have not heard any of these warnings is very large and *prima facie* indicates that the warnings, if announced at all, were not announced on loudspeakers or at any rate, were not announced in all the localities. It is at least certain that the warnings did not indicate the gravity of the situation. Whatever evacuation has taken place has taken place in the traditional lowlying areas. In other areas, the people left their houses on seeing the danger and most of them (even Heble agrees on this) made their own arrangements for shelter. It is significant to note that the citizens faced the situation boldly and even went to the help of their neighbours on their own. So far as the civil authorities were concerned, their activities showed lack of foresight and absence of planning and organization.

## SECTION 22

## SUMMARY OF FINDINGS ARISING OUT OF THE DISCUSSION OF THE SECOND PART

In the course of the discussion, I have set out the conclusions arising out of different topics discussed in different Sections. In this Section, I will summarise the general conclusions in a broad manner and in a succinct form :—

✓ (1) The measures taken by the irrigation officers for averting the disaster were as good as they could be in the circumstances of the case.

(2) The civil authorities viz., Mohite and Prabhakar, took the prompt measure of supplying the help of the army engineers for continuing bag-stacking operation, which was all that could be done in the circumstances of the case for averting the disaster of the failure of the Panshet dam.

(3) Prabhakar received the message sent by Bhalerao in the early hours of the morning of the 11th July saying that 'Panshet dam was in danger and heavy floods were expected'. In any case, Prabhakar came to know the substance of that message from Desai and Khursale, when they went to him on the 11th morning.

(4) Prabhakar told the two engineers that he would take steps to alert people living in areas extending to about four furlongs on either side of the river.

(5) Prabhakar conveyed the substance of the message to G. S. Joshi, Home Inspector, D. S. P., Rural. The latter was not then in Poona and that must be the reason why the message was conveyed to his Home Inspector.

(6) Similarly, Prabhakar must have conveyed the substance of the message to the District Superintendent of Police, Poona City, or to his Home Inspector. The District Superintendent of Police, Poona City, also must have independently come to know of the message or its substance.

✓ (7) For reasons best known to himself, Prabhakar took no steps to alert the people in the areas as per his promise to the two engineers.

(8) Desai and Khursale approached the Collector, a second time after their visit to the Panshet dam and informed him that a portion of the dam was sinking and breach of the dam was also imminent.

(9) At that time, the engineers told Prabhakar that in case the Panshet dam breached in a wide section, which was more likely, the floods would be far bigger than the floods of 1958. They also told him that the Khajakwasla dam was also likely to breach in case the Panshet dam breached.

(10) Prabhakar must have conveyed the same information to Mohite when he went to the latter along with the two engineers for requesting Mohite to ask for the help of the army engineers.

✓ (11) The civil authorities took no steps even after the information about the breach of the Panshet dam being imminent, was conveyed to them (except that they arranged for the army help).

(12) Left to himself, Prabhakar would not have even convened the emergency meeting of the authorities for devising measures to meet the emergency arising out of the likely or imminent breach of the Panshet dam.

(13) Mohite did well in convening an emergency meeting for devising such measures. The meeting should, however, have been more broad-based and invitations should have been issued to the Sub-Area Commander, the Superintending Engineers, D. I. C. Nos. I and II, the Mayor, some prominent citizens including the Members of the Parliament and of the legislature and press representatives and the Head of the Home Guards.

(14) Mohite is not telling the truth, when he says that the engineers told him that, an earth dam was likely to breach, if it is overtopped and that the Khadakwasla dam being a masonry dam would not breach, even if it was overtopped. He is also not telling the truth when he says that the engineers told him that it was not possible to make even an approximate estimate of the floods arising out of the breach of the Panshet dam.

(15) The Collector and the Divisional Commissioner, and in any case, the Collector, must have gone through the files from the Collector's office relating to the floods of 1958.

(16) From these files and also by reason of the official information, which they had, they knew that the Khadakwasla dam was a weak dam. They also knew that it was apprehended during the floods of 1958 that the Khadakwasla dam would give way.

(17) The Divisional Commissioner's meeting decided that warning should be given to the traditional six lowlying areas and no more. The case, which has been developed in the course of the inquiry before the Commission viz., that it was decided that warning should be given in all the lowlying areas, is an after thought.

(18) The story that an emergency control room was decided to be set up and was actually set up in pursuance of the decision taken in the Divisional Commissioner's meeting in the Corporation Building is also an afterthought. What was decided in the meeting was that a few officers should be kept in the Corporation Building for co-ordinating the activities of warning and evacuation. No arrangement was made for receiving information relayed on wireless from Panshet and Khadakwasla.

(19) The meeting decided that 13 or 15 trucks should be made available for the purpose of evacuation.

(20) Warnings were given only in the traditional six lowlying areas.

(21) It is clear from the localities in which warnings were given and the other measures devised that, the authorities contemplated that the floods likely to be released by the possible breach of the Panshet dam, would not reach beyond the traditional lowlying areas.

(22) The civil authorities estimated that the number of persons to be evacuated would not exceed 6,500. There was no idea that transport facilities should be made available to all the people, who would be required to be evacuated, but only to a few among them such as, the sick, the infirm and invalid ones.

(23) The compliance report below the 'Jahir Suchana' (Ex. 427), which purports to have been made on 12th July 1961, was not made on that day, but sometime later.

(24) None of the civil officers thought of making a trip to Panshet and seeing things for himself. This indicates that they were not seriously applying their mind to the question.

(25) The civil authorities did not inform the All India Radio, Poona Station, to broadcast the news, that there was danger to the Panshet dam, on the night of 11th July 1961.

(26) Although it is said that arrangements were made for rescue and evacuation to be carried out during night time, no preparations were made in that respect, such as, provision for torches, petrolmax etc. No boats were requisitioned from the military; army help was not sought or taken; fire brigade was not alerted and Home Guards were not alerted.

(27) Everything pointed to the conclusion that the civil authorities were unprepared to meet the situation, which actually arose on the morning of the 12th July on account of the breach of the Panshet dam.

(28) Mohite must have received the message at Ex. 96 on the night between the 11th and the 12th July 1961.

(29) Mohite departed for Bombay on the morning of the 12th July by the Deccan Queen inspite of having received the above message. It is a tragic coincidence that Mohite's departure was just after the intimation about the overtopping of the Panshet dam was received in Poona.

(30) It seems from operator Sawant's report that Mohite was personally informed by Sawant on the morning of the 12th July that the Panshet dam was overtopped. Mohite left for Bombay ignoring even this report.

(31) It was for Mohite to explain as to why he departed for Bombay on that crucial morning and the explanations offered by him are unsatisfactory.

(32) The result of Mohite's departure was to further paralyse the civil administration in Poona, which was already unprepared for meeting the unprecedented situation.

(33) The measures taken, after the receipt of the message that the Panshet dam had overtopped, were improvised, unsystematic and insufficient to meet the requirement of the situation.

(34) No proper arrangements for broadcasting the message that the dam had breached were made. The All India Radio, Poona Station, was not instructed to broadcast the message that the Panshet dam had overtopped.

(35) There is conflicting evidence about the nature of warnings conveyed on that morning. There is also conflict about the areas to which the warnings were given.

(36) There is no satisfactory evidence to prove that warnings were conveyed thrice on that morning (12th July) as Heble claims it to have been done, the first at about 8 a.m., the second at about 10 or 10-30 a.m. and the third at about 3 or 3-30 p.m.

(37) The areas of warning were extended from time to time, according to the exigencies of the situation and to the extent of the rise of water.

(38) Only a few vehicles were used for evacuation and the attempts at evacuation were largely confined to the traditional lowlying areas.

(39) The evacuation of thousands and thousands of citizens took place on a voluntary basis. It was largely due to the voluntary efforts that many persons, who were marooned, came to be rescued.

(40) Individual policemen and the officers did take part in rescuing the marooned people and evacuating the flood affected victims. Their efforts, however, were on their individual initiative and were unco-ordinated.

(41) It is doubtful whether the citizens were properly warned about the breach of the Khadakwasla dam at any time in the course of the 12th July 1961.

(42) Life in the city of Poona was normal through the whole of the morning of the 12th July. Shops were opened. Traffic was going on as usual. Schools and colleges were running and municipal governmental offices were working with almost full complement.

(43) Hundreds of spectators were flocking to the riverside and watching the rise of floods by standing near bridges like Lakdi bridge, which was fully submerged.

(44) No arrangement was made for regulating the traffic on roads and bridges, which were likely to come under water.

(45) The officers continued their operational headquarters in the Corporation Building till the water entered the building.

(46) There was no one to guide the refugees to particular centres of shelter and no one was kept in charge of any of these centres.

(47) Several refugees went to and took shelter in public buildings such as, Dharmashalas, Railway Station and offices.

(48) On the 13th morning the police themselves were responsible for spreading the rumour that the Khadakwasla dam had breached and fresh floods were coming. As a result of this rumour, a scare was created among the public who started running amuck to places far away from the river.

(49) On the whole, the measures taken by the civil authorities in the matter of warnings, rescue and evacuation were utterly inadequate.

(50) The defence set up on behalf of the civil authorities is false and is sought to be bolstered up by false evidence.

(51) The entry 'No rain. No danger' in Dandavate's jottings (Ex. 831) is an interpolation.

(52) The endorsement in the margin of the copy of Braganza's message (Ex. 96) sent to Mohite has been tampered with. The original figures and letters have been altered with a view to make it appear that the message was received by Rajput at 11-30 a.m. on 12th July 1961,

## SECTION 23

## THANKSGIVING.

This inquiry was very difficult, complicated and taxing. I had to wade through a stream of documents and statements. The oral evidence led also is considerable. I must, therefore, offer my thanks to those who assisted me in performing this difficult task. Mr. H. R. Gokhale, who represented the irrigation officers, rendered whole-hearted co-operation and assistance in the work of the Commission. His conduct of the case has been dignified and his behaviour with the Commission extremely courteous. After his departure, on elevation to the High Court bench, Advocate Bhandare carried on the same traditions assisted by Advocate Shahane. These advocates were as much co-operative as Mr. Gokhale. My thanks are, therefore, due to all these three advocates. Mr. K. N. Phadke, Advocate, Poona, assisted by Mr. P. B. Sawant, Advocate, from Bombay, rendered signal help to the Commission in putting forward the case on behalf of the Citizens' Committee of Poona. The attitude of the advocates, on behalf of the Citizens' Committee, was always co-operative and helpful. Their conduct of the case and their behaviour with the Commission were polite and exemplary. They never adopted any obstructive or dilatory tactics and throughout were extremely fair to the Commission as also to all the interested witnesses. They stuck to the arduous job notwithstanding that the inquiry was prolonged beyond their expectation, which is a tribute to their sense of duty and loyalty to the cause in the pursuit of truth. I, therefore, sincerely thank them for their co-operation. I wish I had been able to pay similar compliments to the counsel and advocate on behalf of the civil authorities. Their attitude has, however, never been helpful much less co-operative and I reserve my comments in that respect to a separate Section.

## SECTION 24

## PROCEDURE FOLLOWED BY THE COMMISSION

A lot of comment has been made by Mr. Murudkar in his written arguments in regard to the procedure adopted by the Commission, in this inquiry. These comments can be divided into five parts :

(1) The Commission cannot take part in the investigation and collection of evidence.

(2) Evidence which would not be admissible under the Evidence Act has been admitted.

(3) Invitations were extended to witnesses, most of whom have displayed hostility towards the civil authorities in their evidence.

(4) On the whole, the procedure adopted is inquisitorial.

(5) The Commission refused to examine all persons who had put in written statements or submitted reports.

These comments are ill-informed and devoid of substance. The procedure followed by this Commission is similar to the procedure followed by the Tribunals in England in recent times. The Commission under the Commissions of Inquiry Act can prescribe its own procedure so far as the Maharashtra State is concerned. I have cited the relevant extracts from the reports of the Tribunal investigating into the Budget Leak, 1936 ; that of the Lynskey Tribunal, 1948 and that of the Parker's Tribunal, 1957, in my order below Ex. 828 with a view to indicate the procedure that is followed by the Tribunals in England. I have referred to certain of these aspects also in the body of my report. It is not necessary to repeat those passages here. It is sufficient to draw attention to a few sentences from these reports. The report of the Tribunal investigating into the Budget Leak, 1936, observed :

"In the case of an inquiry such as that on which we have been engaged, there is no prosecutor. Such evidence as the Treasury Solicitor has been able to obtain or as *the Tribunal has thought* fit to permit or require, has been furnished. But the testing of the witnesses' stories by way of cross-examination or otherwise has necessarily been undertaken by the members of the Tribunal themselves, with the resultant possibility of creating the impression that they were from the start hostile to some of the witnesses who appeared before them."

The following remarks from the report of the Lynskey Tribunal are opposite to the point :—

"The Treasury Solicitor with the assistance of the police interviewed all persons whom they thought might be able to give useful information to the Tribunal, and statements were taken from them. These statements were then placed before us, and we directed what further inquiries should be made, and eventually decided which witnesses should be called to give evidence before us."

Similarly, the Parker Tribunal observed :

"There is no prosecutor and accused as in a criminal case, and no plaintiff and defendant as in a civil case. It is an inquiry with no charges and no pleadings. Accordingly, all witnesses are witnesses of the Tribunal, called to elucidate the facts. To this end, the services of the Treasury Solicitor and his staff were placed at our disposal. It was their task under our direction to collect all relevant documents and evidence. We interviewed all persons whom we thought might be able to give useful information to the Tribunal, and statements were taken from them. These statements were then placed before us, and we directed what further inquiries should be made, and eventually decided which witnesses should be called to give evidence on oath before us."



It is clear from the observations cited above from the report of the Lynskey Tribunal as also from the report of the Parker Tribunal that it is the duty of the Tribunal to collect evidence with the assistance of the Treasury Solicitor and it is also for the Tribunal to decide as to what inquiries should be made for collecting the evidence and finally to decide which witnesses should be called to give evidence. In the present case, a large volume of documents was placed at the disposal of the Commission. These documents came from various departments. It was necessary to scrutinize these documents and this task was to be performed by the Senior Advocate on Record with the assistance of the Junior Advocates on Record. Thereafter, the Senior Advocate on Record was to give instructions to the Commission's counsel. In this connection, I may refer to the instructions given by Mr. S. V. Gupte, who was the counsel for the Bavdekar Commission, to the Advocates on Record viz., M/s. Bakhale and A. V. Dalvi. Mr. Gupte has made pointed reference to the role played by the Treasury Solicitor in the two Tribunals referred to above. Mr. Gupte then says :

" You are also aware that your investigation cannot be confined to an examination of the facts disclosed by the files made available to the Commission but that your inquiries must extend to other sources of information in regard to the terms of reference which you can think of as being relevant in regard to the Inquiry, such as inquiries with the Military authorities, the A. I. R., Poona Station, Central Irrigation and Power Research Station at Khadakwasla. The Inquiry should be directed to finding out whether there are any materials with them which would help in the investigation. ....

Until now it seems it has not been possible for you to obtain statements from the witnesses, such as, the Chief Engineer and other engineering staff nor of the Executive Officers in charge of the administration in Poona at the relevant time. If they do not respond to the Public Notice, the Advocates on Record would (subject to the direction of the Commission) have to obtain their statements in the nature of proofs for the purpose of their examination-in-chief. .... unless such statements and statements of other witnesses, who are to be examined, are before me well in advance of the date to be fixed for the hearing, it would be impossible for me to examine-in-chief or to think out the line of cross-examination."

Mr. S. V. Gupte's exposition of the duties of the Advocates on Record, conforms to the principles adopted and followed by the Tribunals in England. It is clear that the Commission is incapable of proceeding with the inquiry with a view to discover the facts unless proper investigation has been made and material shifted by some agency. This task is akin to the task of investigation and this investigation has to be done under the supervision and direction of the Commission. It is, therefore, futile to say that the Commission cannot take part or cannot even give directions in the matter of carrying on further inquiries or investigation. As Justice Lynskey remarked :

" These statements were then placed before us, and we directed what further inquiries should be made, and eventually decided which witnesses should be called to give evidence before us."

It has already been explained in the order below Ex. 828 as to why the Commission thought it necessary to write letters to certain citizens requesting them to put in their written statements and agree to give evidence. The reluctance of respectable citizens in India to appear as witnesses is notorious and has received judicial notice. There were also allegations that pressure was brought to bear upon witnesses to make statements on particular lines. The Commission, therefore, felt that it would be useful if a few citizens, who

enjoy status in life, agree to disclose the facts within their knowledge. That does not mean that the evidence of these witnesses would be accepted on trust. That evidence would be subjected to usual judicial scrutiny. The argument, therefore, that certain witnesses are 'invitee witnesses' and by reason of that fact alone their evidence should be rejected, is devoid of substance. In a sense, the officers who gave evidence are also invitee witnesses.

The Commission has power to examine any witnesses whose evidence it considers useful or who have volunteered to give evidence, at any stage of the inquiry. Keeton in his book "Trial by Tribunal" at pages 111 and 112 in referring to the inquiry held by the Tribunal into certain accusations against the Minister of Munitions, in 1921, makes the following observation :—

"However, when the Tribunal reconvened on Tuesday, May 3rd, the proceedings took a fresh turn. A Mr. D. Carpmael of the Disposal and Liquidation Committee of the Ministry stated that in August 1920, he had been told by Mr. Sutton to destroy all working papers that did not refer to contractors' accounts at that moment in progress . . . . . The Chairman also stated that a number of persons had written in, saying that they wished to give evidence. *Although such evidence would not be admissible in a court of law, . . . . . he was not prepared to exclude it. Sir Harold Smith for the Ministry said that the Ministry was willing to submit to the fullest investigation* and eventually Lord Cave decided that he was willing to receive evidence *from any new witnesses* whose names were given that day."

It is noteworthy that this ruling was given by Lord Cave after the arguments in the case were over.

Again, it is noteworthy that the Tribunals in England repeatedly pointed out that their powers of reception of evidence were wide and were not limited to technical rules of evidence such as, hearsay. Some Tribunals have not hesitated even to admit evidence, which was irrelevant and which had no bearing on the questions in issue. The Tribunal in, what is known as, the Savidge Inquiry, has observed (*vide* p. 116—Trial by Tribunal) :

"The evidence led was very voluminous, to some extent irrelevant, and in many cases dealt with trivial incidents of little or no bearing on the questions at issue. I did not, however, feel justified in limiting the scope of the Inquiry or the evidence led, as would certainly have been done in a civil action."

Again, the Tribunal appointed to investigate the Budget Leak in 1936, observed as follows (*vide* p. 136—Trial by Tribunal) :—

"By the terms of reference it has been remitted to the Tribunal to investigate two specific matters of civic administration, namely, the letting of stances in the Corporation Markets and the licensing administration in the City, the period of investigation being from January 1st, 1928, until the present time. *We do not propose to confine our attention to these two specific matters of remit, but shall be prepared to receive evidence as to all departments of civic administration in which there exists the possibility of bribery and corruption . . . . We propose to give to these general terms of reference the most liberal interpretation, and to act on the assumption that we have been appointed to ascertain the truth or falsity of the general allegation which we understand has been repeatedly made that bribery is widely prevalent in the municipality, and that the whole civic administration is corrupt. In this investigation we shall consider all evidence which may be offered affecting either members of the Town Council or permanent officials employed by the Corporation.*"

Again, in another part of the report, the Tribunal observed (*vide* p. 137—Trial by Tribunal):

“I have only one other observation to make. We are anxious to leave open no loop-hole for the suggestion that evidence of general corruption was available and was not adduced. The Tribunal accordingly instructed, advertisementns to be made in the leading Glasgow newspapers *inviting evidence* . . . . . in substantiation of the general allegation, and offering any witnesses who might come forward the immunity enjoyed by those who give ‘King’s Evidence’.”

At this stage, I may dispose of another complaint, which has been made from time to time viz., that the Commission has subjected some of the officers, in particular Mohite and Prabhakar, to searching cross-examination. I have already pointed out that the cross-examination of some of the civil officers took a searching form, because of the peculiar character of the stand taken by them and their studious attempt at departing from the version reflected in their own contemporaneous or near contemporaneous documents. If the Commission is to discover the facts, then it is its duty to conduct the cross-examination regardless of the status of the witnesses. The attitude displayed by the Commission during the cross-examination of these witnesses has always been one of politeness combined with firmness. It is well-known that the burnt of the examination of the various witnesses was borne by Justice Porter himself in the Budget Disclosure Inquiry. The conduct of one of the minister of the Government viz., J. H. Thomas was under scrutiny by that Tribunal. With regard to the treatment by Justice Porter, Keeton observed as follows (*vide* p. 148—Trial by Tribunal):—

“He was treated with great consideration, but with conspicuous firmness by Mr. Justice Porter.”

Mr. Morris, counsel for Thomas, submitted that there was no evidence against Mr. Thomas of any disclosure. He pointed out that no witness had alleged that Mr. Thomas had disclosed Budget secrets and he himself had denied it, Mr. Morris also referred to the duty of the Tribunal to probe and test evidence, since there was no one to cross-examine, and indicated that in consequence, persons might be misled into thinking that the Tribunal was disbelieving the evidence submitted (*see* page 149—Trial by Tribunal). Justice Porter denied that the questions asked indicated any hostility to the witness.

In the Lynskey Tribunal, which was appointed in 1948, there was a deviation from the procedure adopted by the Budget Leak Tribunal, in that, Sir Hartley Shawcross, the Attorney-General himself took a leading part in the proceedings and that he declared at the commencement of the inquiry, that he would discharge that duty with complete indifference to personal or political consequences (*vide* p. 158—Trial by Tribunal). The inquiry showed a growing tendency to regard the Attorney-General as appearing for the Crown, even though there were no charges. It is necessary to note the change in the role of the Attorney-General, since the time of the Lynskey Tribunal. The Attorney-General assumed the role of a semi-prosecutor; stated the case which he wanted to prove and adduced evidence in support of that case. Such a development has not yet taken place in India. In any case, so far as the Commission’s counsel, who stands in the same position as the Attorney-General in the present case is concerned, his role was more or less passive. He did not state any case and had no definite plan. It is now clear from the written arguments advanced by him that he had his definite predilections in favour of the civil authorities. In these circumstances, the Commission would have failed in its duty, if it had not carried on a searching cross-examination of the key witnesses in this inquiry.

The following passage will illustrate the attitude adopted by the persons whose conduct was under inquiry and that of their counsel as also the role of Attorney-General (Lynskey Tribunal ; vide p. 175—Trial by Tribunal) :—

“ Before his examination began, Mr. Aitken Watson, K. C., who was representing him (Mr. Belcher), rose and said :

‘ Before Mr. Belcher is examined, I would like to make a statement which may assist the Tribunal.

While Mr. Belcher vehemently denies that he has received any money, or other consideration or promise, to influence him in any decision he may have had to take as a Minister, he admits quite frankly he has received from Mr. Stanley, Sir Maurice Bloch, and Mr. Matcham, the gifts that they have described.

He now realises, of course, that although he did not receive these gifts corruptly, nor allow them to influence him in any way in the decisions he had to make, these gifts were incompatible with his position as a Minister of the Crown.

Accordingly, it is his intention as soon as he has completed his evidence before the Tribunal, to tender his resignation.

I should add that this is a course he desired to take before the Tribunal sat, but which he did not take, on the advice of his legal advisers. For that action I must assume responsibility.

I should also make it quite plain that the statement I am making is not intended to lessen in any way the rigours of cross-examination.’

Mr. Belcher’s examination concluded on December 13th, and he resigned on the same day.

Mr. Belcher’s ordeal was as severe as any that a public man has been called upon to face, and his cross-examination by Sir Hartley Shawcross was searching and prolonged.”

Incidentally, it may be pointed out that the important part of the evidence led in the Lynskey inquiry as also in the earlier Bank Rate inquiry consisted of hearsay, not only at second hand, but at third or fourth hand (vide p. 159—Trial by Tribunal).

With regard to the comment that the procedure adopted in the present Inquiry was of an inquisitorial character, I may again cite a few passages from the book “ Trial by Tribunal ” by Keeton. At page 228 the author remarks :

“ On the other hand, the activities of committees whose competence corresponds with that of the modern tribunals may be regarded as a kind of censorial jurisdiction. *The Committee or tribunal is investigating allegation that activities of persons in positions of trust, whether in or out of Parliament, fall below what is required by public morality even though such activities may not give rise to any criminal charge.....* Where the function to be discharged is primarily fact-finding, however, the judicial inquiry has very considerable advantages.”

At page 255, the author has pointed out the distinction between the procedure of Star Chamber and that of the Tribunals under the Tribunals of Inquiry Act. He points out that whereas the Star Chamber sat in private, the Tribunal conducts its inquiries in full glare of publicity. He also points out that the object of the Tribunal is to discover facts whereas that of the Star Chamber trial was to discover and punish wrongdoing. Finally, he points out that the foundation of the modern procedure by the Tribunal is the independence of the Tribunal alike from Executive and Parliament. He then refers to the

speech of Lord Shawcross, in which the latter pointed out that the procedure of the Tribunal is inquisitorial rather than accusatorial. Keeton's comment is (*vide* p. 225—Trial by Tribunal).

"This is quite unavoidable if the principal function of the Tribunal is to remain fact-finding and at most censorial; and it is true only if one or more of the principal witnesses is regarded as a quasi-accused."

As regards the comment that the Commission refused to examine all the witnesses who had put in their written statements, I have already pointed out that this request was unreasonable and also irresponsible. I wonder whether such a request would have been made by the civil authorities, if they had been required to foot the bill of the fees of their advocates. As will be clear to anyone, who reads this report, the Commission has based its findings largely on the documents adduced on behalf of the civil authorities and the admissions made by them. The evidence of the citizens has, in no way, influenced the findings. Further, it is necessary to remember that the number of citizens who have stated that no warnings were given either on the 11th or the 12th July 1961 and no proper steps were taken to meet the flood emergency is far in excess of the number of witnesses who speak about some kind of warnings in some localities. So, the non-examination of all the citizens is really favourable to the civil authorities. So far as the reports of the Police, Revenue and Municipal Officers and their subordinates are concerned, they have been admitted in evidence for all purposes. This is obviously more favourable to the civil authorities than their examination before the Commission, which automatically exposes for cross-examination. It may be incidentally mentioned that the Parker Tribunal considered written statements of 236 persons, apart from the oral evidence.

It is surprising that a complaint has been voiced against the Commission for its direction to submit written arguments. Implicit in this is the assumption that oral arguments are necessarily superior in merit to written arguments. It is true that in England, oral arguments have always found favour with courts of law including the appellate courts. The practice prevailing in the Supreme Court of America is somewhat different and the British lawyers are considering the question as to whether the American practice should be adopted in England in certain cases. In this connection, I may refer to an article appearing in July 1962 issue of Law Quarterly Review, Vol. 78, under the heading 'Appeals in England and the United States'. The opening remarks are worth-quoting:

"In the United States, oral arguments are limited in duration and secondary in importance to written briefs; in England, they are unlimited in duration and of primary importance, written briefs being virtually unknown. In the United States, the Judges do most of their work in chambers; in England, they do most of it in open court."

The writer has then referred to an experiment that was launched in the study of the Anglo-American procedure by a team of English jurists and another of American jurists. The writer then refers to the outstanding difference in the practice prevailing in the courts of England and the one prevailing in the United States, as follows:—

"An outstanding difference between the the two nations is the fact that 'briefs' are required in the United States, whereas in England they are not. The brief is a full-dress argument in writing, often running fifty or more printed or mimeographed pages in length. It states the facts, outlines the claimed errors in the proceedings below, and cites and discusses the authorities claimed to justify reversal or affirmation . . . . ."

In England such a document is virtually unknown. The closest approach to it is the 'case' normally required from both sides in the House of Lords and Privy Council. This, however, is a very abbreviated paper, seldom running more than six or seven pages in length, and is intended only as a preliminary outline of the extended oral argument to be made later...."

Again, at a later stage, the writer observes:—

"In the United States, oral arguments are secondary in importance to the briefs and are rigidly limited in duration. In the United States Supreme Court, one hour is allowed to each side; but in many appellate courts, less time than that is permitted, frequently no more than fifteen minutes or a half-hour for each side. Reading by counsel is frowned upon. The Judges do not wish to hear what they can read for themselves. They expect to get all the information they need about the judgment below, the evidence and the authorities relied upon from studying the briefs and record on appeal. They do not even encourage counsel to discuss in detail the precedents claimed to govern the decision preferring to do that job by themselves in the relative privacy of their chambers, with or without the assistance of law clerks."

In England, where there are no written briefs, oral arguments are all-important. They are never arbitrarily limited in duration. While some last for only a few minutes, others go on for many days, even weeks."

Following the exchange of views between the two teams, an experiment was tried in one division of the Court of Appeal to determine whether the amount of time consumed in reading aloud to the court could be materially reduced. It appears that the British jurists are veering round to a modified form of the practice prevailing in the United States. It would thus be seen that there is no intrinsic superiority for the practice of oral arguments even in an ordinary court of law. We are accustomed to the English practice and, therefore, are apt to regard the practice of oral arguments as having merit par excellence. If the need is felt in regard to the modification of the practice of oral arguments in a court of law in a conservative country like England, then, it is idle to contend that the Commission by insisting upon written arguments has deprived the parties of a fair opportunity of presenting their case. The oral arguments, had they been allowed, would have occupied several months and any attempt at curtailment of length, would undoubtedly have resulted in considerable bitterness. Apart from this practical consideration, it is clear to me that written arguments are more beneficial and in this case, if properly availed of, would have been of greater assistance. The advocates on behalf of the civil authorities have frittered away the advantages by indulging in recriminations rather than in logical and coherent arguments.

## SECTION 25

## SOME PROBLEMS

## I. Conduct of the civil officers

This inquiry has raised a number of problems. The task of the Commission was onerous. The Commission was not only called upon to consider adequacy or inadequacy of the measures taken by the various authorities for averting the disaster and for mitigating the consequences thereof, but, it was also called upon to inquire into the causes of the failure of the Panshet and Khadakwasla dams and the circumstances in which that failure occurred. The inquiry relating to the causes of the failure was highly technical. There was a general feeling, not quite unjustified, that this part of the inquiry should have been entrusted to a technician or to a team of technicians. At the same time, there is something to be said in favour of a public judicial inquiry. There is a general complaint, which was voiced by some engineers before the Commission, that the results of the inquiry into the failure of the Bhakar hoist chamber, have not been made public. It was pointed out by some engineers that had the results been known, then the pitfall of using a gate suitable as a flood gate could have been avoided and not used for regulator purposes at Panshet. Thus, a lot of mischief could have been averted. The present inquiry was held in public. Full opportunity was given to expert engineers to put forward their respective points of view and a sort of public debate went on before the Commission. Whatever that may be, the result was that the Commission had to handle an extremely difficult and complicated job. In these circumstances, the Commission expected full co-operation on the part of the officers, who were interested in the outcome of this inquiry and were allowed to be represented by advocates. The officers, whose conduct had to be scrutinized by the Commission in order to record a finding on the question of adequacy or inadequacy of the measures taken by them, continued to hold the posts as before. Government thought it fit not to transfer these officers from Poona for certain reasons, which need not be discussed in this report. In taking this decision, the Government was probably motivated with the best of intentions. The Government probably felt confident that these officers would not take undue advantage of the circumstance of their continuing to hold the same posts and render full co-operation to the Commission in finding out the truth. Unfortunately, however, as indicated in the earlier portions of this report, these expectations were completely belied.

In this connection, I may refer to another aspect and it is this. The Government decided to defray the expenses of the counsel and advocates who would appear on behalf of these officers before the Commission. The appointment of the counsel and advocates was made by the Government and their fees and remuneration were fixed by it. Chapter 14 of the Law Officers (Conditions of Service) Rules and Rules for the conduct of the Legal Affairs of the Government relates to the grant of legal assistance to Government servants. In terms, these Rules relate to grant of assistance by the Government to the officers, who have to institute or defend civil or criminal proceedings in respect of acts done by or purported to have been done by them in the discharge of their duties. These Rules, evidently, do not apply to departmental inquiries, because in these inquiries the person charged is not entitled, as of right, to ask for being defended by a legal practitioner. The present inquiry is neither a civil proceeding nor a criminal proceeding nor a departmental inquiry. No charges are levied against any of the officers and the inquiry is purely for the purpose of finding out facts. The Government therefore, is not bound to make provision for financial assistance for legal

representation of these officers in this inquiry under the Law Officers (Conditions of Service) Rules or any other Rules. In my view, the Government should not have made a blanket provision for meeting the expenses of legal representation of the authorities, who were interested in this inquiry and, as such, stood in the position of interested witnesses. In England, it is not the practice to make a provision for the expenses of legal representation. George W. Keeton in his book "Trial by Tribunal" at page 233 has discussed the question as to whether legal costs of those whose conduct is found to be without reproach, should be met by the Treasury. That means that it is at the end of the inquiry and on the basis of the findings recorded by the Commission that Government will have to consider the question as to whether legal costs should be met by it. The author, on the same page (223), has referred to the speech made by the Lord Chancellor in connection with the debate in the House of Lords in regard to "Waters inquiry" and says :

"The Lord Chancellor also made an important contribution on the general question of costs. He pointed out that if the costs of legal representation of a witness were to be paid by the State, the duty of deciding what witnesses should be entitled to their costs would devolve upon the Tribunal. This was not an insuperable objection, but it required full examination before it was adopted."

With regard to the suggestion that legal costs of those, whose conduct is found to be without reproach, should be met by the Treasury, the author remarks :

"If it is suggested that to make such a provision would be to encourage unnecessary or *unduly lavish* legal representation, it would be an easy matter to provide that the Tribunal should have a discretionary power to grant or withhold costs."

It is clear from the above passages that the question as to whether the legal costs of the interested witnesses is to be met by the Government or not falls to be considered only at the conclusion of the inquiry and will largely be influenced by the findings recorded by the Commission. Indeed, as was pointed out by the Lord Chancellor in the debate of "Waters inquiry", if the costs of legal representation of a witness were to be paid by the State, the duty of deciding what witnesses should be entitled to their costs would devolve upon the Tribunal or Commission. The matter must be left to the discretion of the Tribunal and it is for the Tribunal to recommend the grant of costs to particular witnesses. The Tribunal, of course, will exercise its discretion in the light of its findings. The Tribunal, naturally, would recommend the grant of costs only in respect of such officers whose conduct has been found to be without reproach. In my view, this is the correct perspective which Governments in India should adopt in all cases of inquiries started under the Commissions of Inquiry Act, wherein the conduct of Government servants comes under scrutiny.

I am not interested in the question as to whether the Government was right or wrong, in this case, in making a blanket provision to cover the costs of legal representation of the officers from the funds of the Treasury. I am, however, concerned in this matter from two points of view. The first is, that it is the duty of the Government to set up salutary precedents, and secondly, the possible effect that may be produced on the inquiry by reason of prior provision of legal costs of these officers. The civil officers had a feeling throughout the inquiry that the Government was interested in defending them. On many occasions their advocates stated that the civil officers were the Government. Probably, these officers had a feeling that the Government



had a stake in their defence or they had a feeling that Government had ranged themselves behind them, and this feeling manifested itself in their conduct as also in the conduct of their advocates.

On the 19th July 1962, these officers put in an application (Ex. 828) through their Advocate, Mr. Murudkar. In this application, a definite allegation was made saying that the attendance of certain witnesses was secured by the Commission by writing letters to them and it would be unfair and highly prejudicial to these officers to have these witnesses examined before the Commission. This application was not countersigned by the clients of Mr. Murudkar. In my order below Ex. 828, I stated that although the application is not countersigned by the clients of Mr. Murudkar, still, it must be presumed that the application was made under their instructions. I also stated that if Mr. Murudkar's clients did not have confidence in the Commission, it was open to them to move the Government for cancelling the Commission. Mr. Murudkar had expressed his inability to move the Government for getting the Commission cancelled on the ground that, the civil officers were part and parcel of the Government. I, therefore, directed that a copy of this order should be sent to the Government so as to enable them to take such steps as it deemed necessary including the termination of the Commission. Government did not take any action on this order even by way of exerting a moderating influence, perhaps, because they did not think it proper to interfere at that stage. The result, however, is clearly noticeable in the written arguments submitted on behalf of the civil officers and the attitude underlying them. It is significant that the arguments, the real purpose of which is to persuade the Judge and win him over, have been utilised for the purpose of making allegations of partiality and prejudice. The Senior Advocate on Record, in his notes submitted to the Commission, terms this attitude as one of blackmail. I shall however content myself by saying that the attitude was most unfortunate and was, in no way, calculated to facilitate the investigation which the Commission was making. In any case, it is clear that these charges are not meant for the assistance of the Judge against whom they are levied. Evidently, these charges are meant for consumption elsewhere. Most of the allegations have already been refuted in the course of the discussion. It is sufficient to observe that there is no substance in any of them. The inquiry was conducted under the full glare of publicity and in the presence of the lawyers. The record will speak for itself.

## II. Conduct of the Advocates of the civil officers

In considering the conduct of the Advocates, it is necessary to bear in mind the nature of the duty of an advocate. In this connection, I may cite the following passage from the book "Miscellany-at-Law" by R. E. Megarry, in which Crampton J. said (*vide* p. 51) :—

"Such, (to be the mouth-piece of the client) I do conceive, is not the office of an Advocate. His office is a higher one. To consider him in that light is to degrade him. I would say of him as I would say of a member of the House of Commons—he is a representative, but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law—he will not wilfully misstate the facts, though it be to gain the cause for his client. He will ever bear in mind that if he be the Advocate of an individual, and retained and remunerated (often inadequately) for his valuable services, yet he has a prior and perpetual retainer on behalf of truth and justice; and there is no Crown or other license, which in any case, or for any party or purpose, can discharge him from that primary and paramount retainer."

In this light, let us now consider the way in which the defence was conducted on behalf of the civil authorities by Mr. Ghaswala and his assistant, Mr. Murudkar. At a very early stage of the inquiry, that is to say, during the cross-examination of S. G. Barve, who was the first witness to be examined before the Commission, it happened that I overruled some questions put by Mr. Ghaswala. Mr. Ghaswala was evidently irritated and in an excitement exclaimed, "When questions asked by other Advocates were not objected to by the Commission, why is it that the Commission is objecting to my questions". I pointed out to Mr. Ghaswala that generalizations are no good, because each question was considered on its own merits. At this, Mr. Ghaswala raised his voice and made angry remarks clearly suggesting discriminatory treatment. I did not take serious notice of this flurry on his part at that time. Mr. Ghaswala, however, continued to repeat the same charge on one or two more occasions and it then became necessary for me to take serious note. I pointed out to Mr. Ghaswala the implications of what he was saying and told him that it was improper for an advocate of his standing to stoop to that level. Thereafter, Mr. Ghaswala behaved himself properly for quite some time. One day, he came to my chamber and offered his apologies for the incidents that took place in the open session and assure full co-operation. Mr. Ghaswala continued to take part in the proceedings till the 10th of July 1962 on which date, Yadav, City Engineer (Ex. 793) came to be examined. I have discussed the incident during the cross-examination of Yadav, in full, in my order below Ex. 828 and also in my report. I do not wish to repeat what has already been stated there. It is sufficient to point out that Yadav admitted, in answer to a question by Advocate Sawant, that he was called by Advocate Murudkar to the Poona Club for giving him (Yadav) instructions. This admission evidently contained grave implications. Mr. Ghaswala did not attend the session from this date. He never informed me that he had withdrawn from the case, but continued to remain absent from the session, although on some occasions, he was present in Poona. Mr. Ghaswala did try to interrupt twice or thrice during the cross-examination of Yadav at vital points, and I had to ask him not to do so. There was no discourtesy shown to him on any of these occasions. If, Mr. Ghaswala had, therefore, stayed away from attending the sittings, the reason must be found elsewhere. After Mr. Ghaswala ceased to attend the sittings, Mr. Murudkar continued the conduct of the case in the same spirit.

I do not propose to deal here with all the aspersions cast against the Commission in the course of the written arguments. One of the allegations is that the Commission granted special privileges to the press. The only facility that was given to them was to give them copies of short summaries of the written statements of the witnesses. I am inclined to the view that the furore against the press has been raised by the Advocates on behalf of the civil authorities (in this, the Commission's counsel also has joined hands with the advocates on behalf of the civil authorities), because the accounts appearing in all the newspapers do not support the wild allegations made against the Commission in the written arguments. The allegation that the irrigation officers used to meet the Commission is devoid of substance. Some of the expert witnesses, such as Dr. K. L. Rao, Dr. Joglekar, Prof. Govindarao, Mr. Dhanak, Mr. S. B. Joshi and Mr. Champhekar did see me in my chamber. Chief Engineer Pandit did not meet me except on the occasion of presenting applications on behalf of the Government.

### III. Commission's Counsel

It is a matter of deep regret that Mr. Rege, who was appointed to assist the Commission, has thought it proper to make some comments against the

orders passed by the Commission (Ex. 499) and the two notes (Exs. 458A and 515A). As Commission's counsel, it was Mr. Rege's duty to bring to my notice any irregularities committed by the office or any statements, which he considered incorrect or improper and which had gone on the record of the Commission. I do not think this report is the proper place where Mr. Rege's comments should be dealt with, since it is a matter between the Commission and its own counsel. I do not think, I shall be justified in dealing with these matters which concern the Commission and its own officers only, merely because Mr. Rege, forgetting his proper functions as the Commission's counsel, preferred to raise them in his written arguments for the first time. An entirely different version in regard to the aforesaid matters is found in the notes submitted by the Senior Advocate on Record, Mr. Bakhle. I have carefully considered both the versions and I am now inclined to the view that the version put forward by the Senior Advocate on Record is more probable. However, these matters are extraneous to the merits of the case and, therefore, I do not propose to deal with them here.

#### IV. Lawyers on behalf of the Citizens' Committee

I have already mentioned that Advocate Phadke assisted by Advocate Sawant rendered full co-operation to the Commission in this difficult task. They conducted the case purely in the spirit of disinterested pursuit of truth, without bringing any political or other considerations. That is why their co-operation was more valuable. I would suggest that Government should pay the fees of these two Advocates, who have rendered such yeomen service. The fees, however, should be on a reasonable basis, and not on a lavish scale.

(Sd.) V. A. NAIK,  
Commission of Inquiry,  
Panshet and Khadakwasla Dams,  
Poona.

Bombay 1, dated 5th January 1963.